Lt. Col. A. Fraser

NOTES ON MILITARY LAW

FOR

THE USE OF THE CADETS

OF THE

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ABBREVIATIONS.

Act	Army Discipline and Regulation Act.
A. W.	Articles of War.
C. in C.	Commander-in-Chief.
C. O.	Commanding Officer.
C. B.	Confinement to Barracks.
C. M.	Court or Courts Martial.
G. C. M.	General Court or Courts Martial.
D. C. M.	District " "
R. C. M.	Regimental " "
Field G. C. M.	Field General " "
F. O.	Field Officer.
H. M.	Her Majesty's.
[illegible]	Imprisonment.
[illegible]	Judge Advocate General.
[illegible]	Judge Advocate.
[illegible]	Mutiny Act.
[illegible]	Non-commissioned Officer.
[illegible]	Provost Sergeants.
[illegible]	Secretary of State.
[illegible]	[illegible] Surgeon.

The figures in [illegible] refer to the sections of the Discipline Act.

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F. O.	Field Officer.
H. M.	Her Majesty's.
Impt.	Imprisonment.
J. A. G.	Judge Advocate General.
J. A.	Judge Advocate.
M. A.	Mutiny Act.
N. C. O.	Non-Commissioned Officer.
P. S.	Penal Servitude.
S. of S.	Secretary of State.
U. K.	United Kingdom.

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CHAPTER I.

INTRODUCTORY.

The Laws of Great Britain and Ireland as applicable to every subject, are derived from two separate sources:—

1. *Statute Law*—Passed by Parliament and sanctioned by the Crown.

2. *Common Law*—A Judge-made Law, derived from precedents formed by the decisions of celebrated Judges, which are sure to be followed, and become as binding as Statute Laws.

Statute Law is gradually replacing Common Law, but it is a slow process.

Military Law has no permanent Statute, and reference to precedent is by no means frequent. Still there exists the Written Law, the Army Discipline and Regulation Act, and the Unwritten Law recognised in the former Articles of War under the term "Custom of War," which was analogous to the Common Law. The Act which is now in force states (*under the Rules of Procedure for C.M.*) that "where any matter or thing is not provided for, the existing practice is to be followed so far as consistent with its provisions." Yet the nature of Military Courts being temporary, and all records of proceedings being destroyed after a certain time, former precedents cannot always be followed, although members of Courts would often have gladly availed themselves of precedents for their guidance if they could only have done so.

The advantage of Military over Civil Law is that the Act having to be re-enacted every year can be periodically corrected, and all regulations becoming obsolete are struck out. Each new Act is thus, as it were, a clean sheet, which is distinctly of great advantage, as in Civil Law only alterations in parts of certain Acts are frequently made, and so one Act gets, as it were, piled up on the top of another until there is great confusion.

Both Military Law and Martial Law consist of exceptional powers for dealing with offences which it might be dangerous or undesirable to leave to the ordinary course of justice. The action of Civil Law is too slow for military purposes; moreover, that which might be perfectly harmless in the case of a civilian, might, in the case of a soldier, constitute a serious offence against Military Discipline.

Military Law has a distinct code, is regular in its application, and is administered by persons having power to do so.

Martial Law has no code, is irregular in its application, and unless proclaimed by Parliament, is administered by persons who have either assumed the power to do so or received it without legal sanction. It affects all persons, whether civil or military.

CHAPTER II.

MARTIAL LAW.

It is difficult to clearly define Martial Law, or to state what offences may be tried by it, when it may be proclaimed, and how offenders are to be tried and convicted under it. On all these points guidance has to be sought by what has been done in the past.

Up to the close of the seventeenth century Martial Law had been from time to time exercised in England by commissions from the reigning sovereign, but even then it was considered by Parliament an extreme use of prerogative.

In the early M.A. there was no mention of the Crown's prerogative to proclaim Martial Law, but later M.A.'s and in the present Act, it distinctly states that no man can be "subjected in time of peace to any kind of punishment within this realm by Martial Law." Hence there is a distinctly defined permission to proclaim Martial Law.

But the difficulty remains to define when this authority may be exercised.

There have been many definitions of Martial Law, but all are defective. Sir David Dundas, as J.A.G. in 1850, said: "It is necessary to distinguish between Military Law and Martial Law. Military Law is to be found in the M.A. and A.W. —those and those alone it is which are properly called the Military Code, and by which the land forces of Her Majesty are regulated. Martial Law is not a written law; it arises on a necessity to be judged of by the executive, and ceases the instant it can be allowed to cease. Military Law has to do only with the land forces mentioned in the Second Section of the M.A. Martial Law comprises all persons, whether civil or military."

Lord Hale describes Martial Law as "no law, but something indulged rather than allowed as law." It is, in effect, a rule for superseding the ordinary law, which necessity, more or less urgent, must be shown to justify.

As Sir Charles Napier expressed it, "The union of legislative, judicial and executive power in one person is the essence of Martial Law;" or as the Duke of Wellington explained, "It is neither more nor less than the will of the General of the Army."

Martial Law may be considered under three heads:—

1st. As applicable to officers and soldiers under the Discipline Act, and under what circumstances it is to supersede the latter;

2nd. Applicable to provinces occupied during the continuance of war;

3rd. Applicable to a whole community in time of rebellion;

1st. It is admitted beyond a question that the *law of necessity* may arise and may be used against persons under the M.A.

There is excellent authority for this, namely, the opinions of eminent lawyers.

In the case of Governor Wall, who was a Lieut.-Colonel in the army, and Governor and Commandant of an island on the coast of Africa in 1782, the garrison of which consisted of about 150 men:—

One day several men of the detachment went to the paymaster's house to demand an allowance to which they considered they had a right. The Governor interposed, ordered a parade, and had a sergeant, who was among those who went to the house, severely flogged with a one inch rope, inflicting on him 800 lashes, from the effects of which the man died five days after.

The Governor left the island the day after this flogging and arrived in England, but went abroad again, on the advice of his friends, to be out of the way. Twenty years later he was brought to trial for murder and executed.

The line of defence set up was that a mutiny existed in the garrison, and that this sergeant was one of the ringleaders; and further, that officers on parade had

formed a "drum-head" C.M. before the flogging, and that he, the Governor, merely carried out their sentence. The statement as to the C.M. he failed to establish, but the Judges ruled that had he done so, the defence would have been valid.

The Attorney-General prosecuting, said: "There may be circumstances for a military officer justifying him in the infliction of punishment without a General or R.C. M., if there be that degree of imminent necessity that supersedes recourse to ordinary tribunals. It concerns the public safety that means of repressing a mutiny should be powerful, sudden, and capable of application, in order to cope with such an evil. If the mutiny in the garrison did exist and was serious, as was stated in the defence, the prisoner would not only have been an innocent man, but a meritorious man for using the powers within his reach."

The Judge, charging the jury with these views, coincided in them, and said: "If there were a mutiny, and if there were a C.M. such as could be had, even not a legal one, if the man was warned that he was on his trial and called upon to say how he became one of the mutineers, and if you do not discover a malicious intent to destroy this man, or a wilful disregard of human life in the use of the instrument and the manner of the punishment, you will acquit the prisoner."

Again, Sir David Dundas, in giving evidence in 1850 before the Parliamentary Committee of Enquiry into the Ceylon disturbances of 1848, said: "If five or six regiments mutiny in the field, would any one tell me you must apply to Parliament before you could reduce these persons to subjection ?—*there must be somewhere, for public safety, a right to exercise such power in time of need.*"

These opinions are often quoted and expressed without dissent, and never controverted.

Under this heading used to come the summary punishments, for crimes committed by troops in the field, inflicted by the Provost Marshal under the authority of the C. in C. This authority rested on the same basis, namely, on Martial Law, and was an arbitrary Act deriving its force from necessity and custom. It was formerly considered that the power of life and death must always be vested in a C. in C. of an army in the field, his justification for using this power and mode of exercising it being his own conscience.

By section 72 of the Army Discipline Act the C. in C, or Provost Marshal under him, has this power no longer; but the commander of a force in the field must assemble a Field G. C. M. for the trial of an offender. 72

2nd. The application of Martial Law to an occupied or conquered province.

From time immemorial a conqueror has been entitled to impose on the conquered any law he may think proper. This condition commences from the very moment he conquers the country, all previous laws become extinct, and the C. in C. is bound to establish a code of laws until his sovereign lays down a regular code. As a rule the C. in C. reinstates the civil administration, only taking care they do not interfere with his military operations.

In the instructions issued by the Northern States Government in April, 1863, for the guidance of their armies during the civil war, military oppression is denounced and Martial Law is defined as being "simply military authority exercised in accordance with the laws and usages of war," or the "common law of war," it being incumbent upon those who administer it to be strictly guided by the principles of justice, honour and humanity. It should be less stringent in places fully occupied and fairly conquered than in places still the scene of actual conflict. Its most complete sway is allowed in the commander's own country, when face to face with the enemy, because his paramount duty is the defence of the country.

3rd. When may Martial Law be resorted to as affecting the whole community, civil and military, and how?

This presents greater difficulties, and is not a problem to be solved in anticipation of the event.

All acts committed under the authority of Martial Law are always scrutinized, and must be justified subsequently by an Act of Indemnity, passed to cover only such acts as have been properly done under the "law of necessity," but Parliament does not indemnify acts not of necessity but of oppression.

When Parliament sanctions the introduction of Martial Law in a country, C.M. can legally try any person.

No authority but Parliament has really the power to proclaim Martial Law. The military authorities are justified, however, under certain circumstances, in taking the law into their own hands in self-defence,—the case is analogous to that of killing a man in self-defence.

The proclamation of Martial Law by any other authority than Parliament being itself illegal, cannot legalize anything done under it, even though forms of Military Law may be adhered to.

Although forms and procedure will not legalize acts done, they will materially diminish responsibility and, therefore, as close an adherence as possible to the established laws of the country, the established usages of war, and the forms and practice of C M. is always advisable.

The question of the co-existence of Military Courts with Civil Courts has never been fairly settled. When Martial Law was instituted in Ireland, in 1798-99, 1803 and 1833, the Civil Courts sat for all ordinary cases.

In the Petition of Rights it was acknowledged that Martial Law was a necessity where Common Law could not be enforced. The arguments in the House were:—

If an enemy come into any parts where Common Law cannot work there Martial Law can be executed; but if a subject be taken in rebellion, and be not slain at the time of his rebellion, he is to be tried afterwards by the Common Law.

In 1799 the Irish Parliament declared that Martial Law shall prevail whether the Civil Courts are open or not. The Courts in Dublin were open, and a collision between the Civil and Military Courts took place, and the King's Bench granted a writ to take a rebel sentenced to death by a Court Martial out of military custody.

The rebel was too ill to be removed and died subsequently, and hence the case was unfortunately never decided.

However, this shows that the supreme authority of the Civil Law was admitted.

Again, in the case of the proclamation of Martial Law in Canada, in 1837, a letter of instructions from England to the Lieut-General Commanding stated:—"In all cases where the unlimited authority you are now vested with can be exercised in co-operation with, or *in subordination* to the Civil Courts, you are required to so execute it."

With reference to the power of the Executive in the Colonies to proclaim Martial Law, Sir David Dundas, in evidence before the Ceylon Committee, stated:—"Whatever power the Crown can wield the representative of the Crown in a colony can also take upon himself to wield, and he can therefore proclaim Martial Law in the Colonies."

The question arises, is the *proclamation* of Martial Law, before being put in force, a legal necessity?

Opinions say not. The Law Officers of the Crown, in 1838, said:—"The proclamation confers no power on the Governor which he had not without it; the only purpose is to give notice to the inhabitants. A Governor can proceed to put down rebellion with or without proclamation, but the latter is advisable for the sake of warning well-disposed inhabitants."

It is lawful for the military power to put to death all persons engaged in the actual work of resistance. This prerogative does not extend beyond the case of persons taken in open rebellion.

When the regular Civil Courts are open so that criminals might be handed over to them, there is not any right in the Crown to dispose of them otherwise.

In 1867 a circular despatch was sent to the Governors of Colonies with reference to Martial Law: "Her Majesty's Government does not prohibit resort to Martial Law under urgent circumstances and in anticipation of an Act of Indemnity, but the justification of such a step must rest in the pressure of the moment, and the local Governor cannot be relieved from the responsibility of deciding on the nature of the circumstances which would authorize him to withhold or proclaim Martial Law."

Controversies invariably follow the proclamation of Martial Law, not that the prerogative of the Crown to do so is questioned, but the disputed points generally are

—its continuance after the necessity for it has ceased, and the exercise of excessive severity —hence strict caution is necessary to see that the general principles of justice are carried out.

The difficulties of the Jamaica case in 1865 appear to have added confusion and danger rather than enlightenment.

Governor Eyre proclaimed Martial Law in the disturbed district. Mr. Gordon, a ringleader and agitator, was arrested in a place out of the proclaimed district by order of the Governor and handed over to the C.O. of troops at a place where Martial Law prevailed, with instructions to try him by C.M. He was tried, convicted of high treason, and sentenced to death. The proceedings were confirmed by the officer commanding the troops in the district, and subsequently by the officer commanding the troops in the island, after which Gordon was executed. Subsequently an indictment for murder against Governor Eyre was presented to a grand jury in London, which indictment rested on four counts :—

1. *Locality* of arrest not under Martial Law ;
2. Crime committed *prior to date* of proclamation ;
3. Only evidence was *documentary*, and insufficient before an ordinary court ;
4. State of Martial Law prolonged beyond *necessary time*.

With regard to the first count, Judges differed. One stated that as by the general law all crime is local and must be tried where committed, the Governor was justified in bringing Gordon into the proclaimed district for trial. Others, however, considered that, crime being local, an offender should only be arrested and tried within the area in which Martial Law is in force. Also, as concerns the second count, the balance of opinion was that no proclamation of Martial Law can have a retrospective effect.

With regard to the third, the C. M. consisted of a Lieutenant Royal Navy as President, with another Lieutenant Royal Navy and one Ensign West India Regiment as members, and no allegation as to the legality of the court was made. The objection of insufficiency of evidence was not much argued, as it was considered that the court's opinion must be decisive.

Mr. Disræli, in 1866, as Chancellor of the Exchequer, stated in reply to a question in Parliament, "In the state of Martial Law there can be no irregularity in the composition of the court, as the best court that can be got must be assembled."

As concerns the last count, it was considered that the Governor was under no obligation to rescind the proclamation.

Governor Eyre was therefore considered to have acted wrongfully in arresting Gordon out of the proclaimed district and transferring him to the proclaimed district for trial ; also, that as he committed the crime before the proclamation of Martial Law, Gordon should only have been tried by Civil Law. It was, however, acknowledged that Governor Eyre had acted in good faith and had brought the colony safely through a great danger, so that, notwithstanding these errors, protection was afforded him.

In the United States a very proper distinction is drawn between Military Courts assembled under the Statute, which are called "Courts Martial," and those assembled when Martial Law is in force, which are called "Military Commissions." In England both descriptions of Courts are called Courts Martial, and the general public are consequently not able to discriminate between the two.

CHAPTER III.

HISTORICAL SUMMARY OF MILITARY LAW.

The study of Military Law involves considerations of its origin and progress, as well as of the exact details of the law as it at present exists; and though this latter point is undoubtedly of the greatest importance, still it is clearly necessary that something should be said concerning the introduction of a law, which, till the close of the 17th century, was unknown in England.

Before the days of standing armies, troops in peace time were few, they were paid and kept by the Sovereign as his personal guards, and were liable to punishment like any other of his servants. When military forces were collected for expeditions, or for suppressing rebellions, "Special Ordinances of War" were issued under the Royal Prerogative and applied by the C. in C. in the field, and these ceased when the army was disbanded.

The idea of a separate code with distinct courts was taken from a Statute of Richard II. (1377-99), which established a court of the Constable and Marshal, which dealt with military matters not cognizable by Common Law.

The first trace of the issue of laws applicable to soldiers (not in war time) was in 1625, for the government of troops guilty of offences *Civil* and Military, returned from Spain, whom Charles I. ordered not to be disbanded.

The Common Law of England, having sprung up in an age when all men bore arms occasionally, and none constantly, recognized no distinction in time of peace between a soldier and any other subject, consequently Parliament objected to soldiers being withdrawn from the protection of Civil Laws, and this led to the "Petition of Rights" (1628), by which soldiers were not to be withdrawn from the protection of Civil Law, nor from its punishments.

The civil wars in England brought numbers into the profession of arms, and at the restoration of Charles II the army then existing had been raised by the commonwealth. The Parliament of the Restoration (1660) permitted Charles II to retain, at his own cost, and govern by his own regulations, a body of soldiers, 8,000 strong, designated "His Majesty's Guards and Garrisons," and ultimately forming the "Standing Army," but no sanction was given to Military Law. Parliament feared that if it legislated for these troops the country would have to pay for their maintenance, and consequently the King was left to govern them under his perogative. The first A.W. sanctioned by Parliament were in 1642, when the King issued orders for the mustering, regulation and payment of these troops. Laws and "Ordinances of War" were to be thereafter issued, meanwhile, authority was given to the General to constitute C. M. in peace, and a Judge Advocate was appointed to take evidence on oath. When capital punishment was to be inflicted, the prisoner was to be tried according to the known laws of the land,—if the offence was not so punishable, then the trial was to take place by special Royal Commission under the Great Seal.

The Articles of 1666 and 1672 established a General C.M. for offences punishable with life or limb, and Regimental or Detachment Courts for lesser offences. The code of 1672, known as Prince Rupert's Code, did not differ, materially, from that of 1666, though the punishments were not so severe. These articles, more than any other, have formed the model on which the present military code and system of military judicature have been formed. All this took place under the authority of the Crown, though Lord Essex' Code (1642) for a Parliamentary Army had the sanction of Parliament.

Throughout the reigns of the Stuarts, the army was entirely under the Sovereign. In 1688 came the revolution which deposed James II, and placed William, Prince of Orange, on the English Throne. This change was not universally acquiesced in by the soldiers serving in the army; and on the abdication of James II, the Scotch regi-

ments refused to recognize the new Sovereign William III. Some soldiers even refused to fight abroad against foreign enemies, and no constitutional law existed by which the mutinous troops could be punished, as hitherto soldiers had been regarded only as citizens, and amenable only to the civil tribunals. The necessity of having a code of military law was now apparent, and in 1689 Parliament passed the 1st Mutiny Act. While giving the King the necessary power to punish offences against discipline committed by soldiers, it was resolved to guard against his employing the soldiers to overturn the Government.

Mutiny, sedition and desertion were the only offences provided for therein; and were to be punishable by death. The duration of this Act was limited to 6 months; but it was at the end of that time renewed, and with few intermissions it has been passed annually ever since, up to 1879. This Act authorized the convening of C.M. by warrant from the Crown or General in Command.

The preamble (or introduction) stated that though the raising or keeping a standing army within the realm in time of peace, unless with the consent of Parliament, was against law, and that though no man might be subjected to any kind of punishment except after a fair trial by his peers,—still, the necessity being urgent, "any man who shall stir up mutiny or desert the service shall be brought to a more exemplary and speedy punishment than the usual forms of law will allow."

The effect of this Act, which operated only on the standing army within the U.K., was to give Parliamentary sanction to the infliction of capital punishment for certain specified offences, which, whether regarded as military or political, it was expedient, should be summarily punished by C.M., while all ordinary military offences were left to be dealt with, as formerly, by the Crown alone. This Act then created the 1st *Statutory* Tribunal for the punishment of military sedition and desertion, and it legalized capital punishment within the U.K. for the above crimes.

Other C.M., not under the statute, but under the prerogative of the Crown, were still held for the trial of all minor offences. These lesser courts were called the Court of the General and the Court of the Colonel.

Abroad, the army continued to be governed wholly and solely by the A.W. and by these lesser courts.

After the passing of this first M.A., additional sections were from time to time inserted as it appeared desirable to embody in the statute what had hitherto only appeared in the A.W. There was thus a sort of a dual code:—

1st. Statutory Courts, to try offences enumerated in the Act.

2nd. Prerogative Courts, to try all other offences.

When a Statutory Court was assembled, the warrant distinctly mentioned the statute. Gradually, however, the two merged into one code owing to the King's going to Holland, when, instead of issuing a specific warrant for each C.M., he issued before going abroad, general warrants to try military offences according to the M.A., and also according to the A.W. (or under the prerogative)—thus a fusion of the two codes took place.

In 1714 a clause was introduced giving express authority to the Crown to make A.W. for the better government of the forces at home.

In 1717 it was enacted that the King might establish A.W., and constitute C.M. for the U.K. as well as beyond seas, with power to try *any* crime or offence, and to inflict *any* penalties.

In 1749 this unlimited authority, which had formed the subject of great parliamentary controversy, was restricted by a proviso, that within Great Britain and Ireland no person should be liable to any punishment extending to life or limb, except for crimes expressly so punishable by the M.A. This restriction was in later times extended to the punishment of P.S.; it did not include troops on foreign service or in the Colonies.

Until 1756 the Marines were governed when on board ship under the Navy Discipline Act, and when on land under the Army M.A.; but separate Marine M.A. and A.W. substantially the same as those for the army, were from that time annually passed by Parliament

In 1766 death for desertion was no longer made absolute, and corporal punishment could be substituted for it. In 1848 provisions relating to limited service were

introduced, but have since been altered as occasion arose. Corporal punishment was subsequently not allowed to be inflicted, except for certain offences, such as disgraceful conduct, but it has now been altogether abolished in time of peace. The practice of branding deserters and men of bad character has also been abolished.

68 In 1879 a Bill was introduced into Parliament for the purpose of passing "The Army Discipline and Regulation Act, 1879," which is a consolidation of the Mutiny and Marine M.A., the A.W. issued in pursuance of those Acts and the Army Enlistment Act, 1870. This Act makes it lawful for Her Majesty to make A.W., which shall be judicially taken notice of by all Judges and in all Courts whatsoever. "Provided that no person shall, by such A.W., be subject to suffer any punishment extending to life or limb, or to be kept in P.S., except for crimes which are, by this Act, especially made liable to such punishment," and further, that "no person is to be punished in any manner which does not accord with the provisions of this Act."

The incorporation in the Act itself of the old A.W. will probably render the exercise of this power unnecessary or very rare.

ARMY DISCIPLINE AND REGULATION ACT.

This Act is divided into five parts, and also classifies "persons subject to Military Law" into two classes—officers and soldiers. In the first four parts it declares the law with respect to officers and soldiers of the regular forces. In the fifth part (ss. 168-176) it points out the circumstances under which the reserve and auxiliary forces and other persons become subject to Military Law, and it modifies the law declared in the first four parts as regards certain members of the regular forces, such as warrant officers and N.C.O's., and also as respects persons who are not altogether subject to Military Law.

The five divisions of the Act are:

Part I. Discipline.
" II. Enlistment.
" III. Billeting and impressment of carriages.
" IV. General provisions.
" V. Application of Military Law, saving provisions and definitions.

Part II. of the Act alters to some extent the conditions of enlistment, service and discharge, and therefore it applies as respects reckoning service, the forfeiture of service, and liability to be detained in the service, only to soldiers enlisted or re-engaged after the passing of the Act, and not to soldiers previously enlisted or re-engaged, except with their own consent. These soldiers (in the absence of consent) remain, as regards the above matter, in their present position, but if they are re-engaged they must be re-engaged under this Act. The subject of enlistment is, however, dealt with principally in Military Administration. It must be recollected that a month in the Act means a calendar month (28, 30, 31 days), but sentences of Impt. are calculated by days.

The Army Discipline and Regulation (commencement) Act, 1879, brought the new Act into force. It commences with quoting the preambles of the M.A. and Marine M.A. These preambles set forth the reason for legislation being necessary and the object of it. The wording of the first assertion is taken word for word from the Bill of Rights on the acceptance of the Crown by William III. in 1688: "Whereas the raising or keeping a standing army within the U.K. of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law." It then asserts the purposes for keeping a standing army. At first it ran, "for the safety of the Kingdom, Protestant religion, reduction of Ireland." Now it is "for the safety of the U.K. and the defence of the possesions of Her Majesty's Crown." It then states the numbers the army is to consist of, including forces in the Colonies and the depôts of corps in India, but not those troops themselves. The preamble to the Marine M.A. then follows. The next paragraph of the preamble states that *in time of peace, within this realm* it is illegal to punish except according to law, but to bring soldiers to a more speedy trial than the slow process of Civil Courts will allow they are to be tried by Military Courts.

Note that the limitations "within this realm" and "in time of peace" have an important bearing on the prerogative of the Crown for putting in force Martial Law.

The object of the Bill brought into Parliament, termed "the Army Discipline and Regulation Act, 1879," is then asserted, viz.:—To provide for the discipline and regulation of H.M. forces, including the Royal Marines. It then states that "the Act shall not come into force, except in pursuance of an annual Act of Parliament to be thereafter passed bringing the same into force, and shall continue in force only for such time and subject to such provisions as may be specified in such last mentioned Act."

Such being the constitutional principles of the Act, the question arises: What would be the effect on the army if Parliament refused to pass the Act, as its assent is essential to the maintenance of an army? Practically the consent of Parliament is given before the Bill is brought up by passing the vote in supplies, and the numbers estimated for in this vote are always copied in the preamble.

Clode * says that, should such an accident occur, the army would be paid, but discipline would have to be maintained as best it could under the royal prerogative (by issuing A.W.), as before the existence of a M.A., and that the army would not be disbanded. This is in accordance with facts, as in William III reign, the M.A. lapsed and discipline was carried on by royal prerogative. Should Parliament refuse the vote of supply no army could be maintained.

DEFINITIONS OF CERTAIN EXPRESSIONS USED IN THE ACT.

"C. in C." means the field marshal or other officer commanding in chief H.M 180
forces.

"Officer" means an officer commissioned or in pay as an officer in the regular, reserve or auxiliary forces; it also includes a person who, by virtue of his commission, is appointed to any department or corps in any of the above forces, retired officers and warrant officers holding honorary commissions.

"N.C.O." includes an acting N.C.O., a warrant officer not holding an honorary commission, and an army schoolmaster.

"Soldier" does not include an officer, but with certain modifications it does include a warrant officer not having an honorary commission and an N.C.O., and every person subject to Military Law during the time he is so subject (men of the auxiliary forces, &c.).

"Superior Officer," when used in relation to a soldier, includes a N.C.O.

"Regular Forces" includes, besides the Regular Army, the Royal Marines, Indian forces subject to certain modifications, and the reserve forces when subject to Military Law.

"Reserve Forces" mean the army reserve and the militia reserve.

"Auxiliary Forces" mean the militia, yeomanry and volunteers.

A General Order of 1879 defines somewhat the position of a warrant officer not holding an honorary commission. It says conductors of supplies and conductors of stores are senior to all N.C.O's.; they will supply the place of subaltern officers when required, but they will not sit as members of Courts of Inquiry or on Regimental Boards. N.C.O's. and men will address them in the same way as they do officers, but will not salute them. They may become honorary members of sergeants' messes.

PERSONS SUBJECT TO THE ACT.

These may be classed generally as follows:—

(*a*) All persons commissioned and paid as officers, belonging to the regular 168
forces, Royal Marines when on shore and not subject to the Naval Discipline Act, and officers of the Militia at all times; also, all persons not generally subject to Military Law, but who, acting in an official capacity, are treated on the same footing as officers, such as Yeomanry or Volunteer officers and persons accompanying troops

* Late legal Secretary to the War Office.

on active service and placed on the footing of an officer. (Officers on half pay are not under the Act).

(*b*) All men attested for H. M. service, or paid as soldiers, including Royal Marines when on shore, and non-combatant as well as combatant branches; also, persons not otherwise subject to Military Law yet who are employed by or accompany troops on active service.

(*c*) Men of the Army Reserve or Militia Reserve Force when called out for permanent service, in aid of the Civil Power, for training, or when voluntarily kept on duty.

(*d*) Militia—during preliminary training, annual training or embodiment.

(*e*) Yeomanry and Volunteers when out for training and when on actual military service, and the Yeomanry in addition when called out in aid of the Civil Power.

173 The permanent staffs of the auxiliary forces are always subject to the Act.

(*f*) Colonial forces when serving under the command of an officer of the regular forces

TABLE OF PERSONS SUBJECT TO MILITARY LAW UNDER THE ARMY DISCIPLINE AND REGULATION ACT.

NOTE.—*All persons subject to Military Law are so subject either as officers or as soldiers.*

I. Regular Forces...	A. British Forces.	(1) Land Forces.	(*a*) Officers and soldiers of the army. (*b*) Army Reserve— Class 1.—General service. Class 2.—Service in the United Kingdom.... (*c*) Militia Reserve; general service..... .... } when called out.
		(2) Marine Forces.	Officers and soldiers of Royal Marines, when not subject to Navy Discipline Act.
	B. Indian Forces.		(1) Officers and soldiers, not being natives of India* within the meaning of India Military Law, subject to English Military Law. (2) Officers and soldiers being natives of India, subject to India Military Law.
	C. Colonial Forces.		Officers and soldiers belonging to a body of troops raised by order of Her Majesty beyond the limits of the U K and of India, and serving under the command of an officer of the regular forces.
II. Auxiliary Forces.	A. Militia. B. Yeomanry. C. Volunteers		Officers of the Militia are always subject to Military Law. The officers and soldiers of the permanent staffs of the Militia, Yeomanry and Volunteers are also always subject to Military Law, either as being part of the regular forces or as being subjected to Military Law at all times by express enactment. The N.C.O's and men of the Militia, Yeomanry and Volunteers are subjected to Military Law only on the occasions specified in the Act.

III. Persons subject to Military Law not belonging to the regular or auxiliary forces.....

A. As Officers

(*a*) Persons under general or special orders of a Secretary of State or of the Governor General of India accompanying, in an official capacity, any of H.M. troops on active service beyond the seas.

NOTE.- Such officers, if natives of India*, are subject to India Military Law.

(*b*) Persons not otherwise subject to Military Law accompanying a force on active service, and holding a pass from the C. O. entitling them to be treated on the footing of officers.

B. As Soldiers

(1) Persons not otherwise subject to Military Law and employed by or in the service of H.M. troops on active service beyond the seas.

(2) Persons not otherwise subject to Military Law and being followers of or accompanying H.M. troops on active service beyond the seas.

NOTE as to (1) and (2).—Natives of India* are subject to India Military Law except in the (improbable) event of their following British forces only.

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* The Indian Articles of War (Act No. 5 of 1869) provide that the Military Law enacted by those Articles shall not apply "to any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, but all such persons belonging to Her Majesty's India army shall be triable and punishable as if they belonged to Her Majesty's British forces." The expression "Natives of India," for the purposes of this lable, means all persons belonging to H.M. India army who are triable by India and not by English Military Law.

MAINTENANCE OF DISCIPLINE.

For the maintenance of discipline in the army, C.O's of regiments are given certain powers for the punishment of minor offences, but for graver offences military tribunals, termed C.M., are authorized by the Act. These military tribunals are analogous in their jurisdiction to petty sessions, quarter sessions and the higher courts of Civil Law. The scope of Military Law is, however, generally restricted to the correction of offences against discipline committed by officers and soldiers, though ordinary offences against Civil Law, except murder, manslaughter, treason, &c., are generally dealt with by C.M.

The Sovereign is primarily entrusted with the command of the army, and with power to enforce discipline. This power is delegated, in the first instance, by the Sovereign to the C. in C., and through him to General and other officers having command under him.

General officers commanding districts or stations have ordinarily entire responsibility and authority over all troops serving for the time under their command. This authority is not required to interfere with the immediate command of regiments, as officers commanding regiments have not only summary power to punish ordinary offences, but also power to summon R.C.M. when necessary.

Thus, minor offences are to be punished in the regiment, graver ones by authority of the General commanding the district (to whom is given authority to assemble and confirm the decision of D.C.M.), and the most serious crimes by supreme authority of the C. in C.

Maintenance of good order—Every C.O. is required to keep order in his command, and to the utmost of his power prevent disorder. *All* officers are required at once to interfere for the prevention of quarrels or frays, though the persons concerned be of superior rank, an immediate report to be made to the C O.

For the purpose of keeping a proper record of offences committed by soldiers, three separate books are kept, one or more sheets being devoted to each soldier:—

1. The Regimental Court Martial Book contains a record of the trial of soldiers by C.M., showing the charges, finding and sentence;

2. The Regimental Defaulters Book contains all entries in the C.M. book, and all punishments inflicted for offences for which more than seven days C.B. are given, and all reductions of N.C.O's to a lower grade or to the ranks;

3. The Troop, Battery or Company Defaulters Book containing all entries in the above two books, as well as all minor offences.

COURSE OF PROCEDURE ON COMMISSION OF OFFENCES.

45. Every person subject to Military Law charged with an offence punishable under the Act is to be taken into military custody.

Military custody means the putting the offender under arrest or in confinement.

Commissioned officers are placed in arrest, which may be either open arrest or close arrest. Open arrest when they have to remain within the precincts of the barracks, and close arrest when they may not leave their quarters. Officers when placed in arrest are deprived of their swords.

N.C.O's are placed in arrest in their barrack rooms, except in extreme cases.

The arrest of private soldiers for very minor offences is confinement to the barrack room; for all other offences in the prisoner's room attached to the guard room.

A prisoner at large in the cavalry or artillery has to attend to his horses, &c., which is a great advantage.

Military arrest or confinement is regarded as legal custody, and escape is punishable by Military Law.

No one is entitled to demand to be arrested, or after arrest to demand trial by C. M.

45 A superior officer may order an inferior into military custody, and an officer may order into custody any officer of whatever corps, though he be of higher rank, engaged in a quarrel, fray or disorder;—for all officers of whatever condition have the power to quell disorders. In addition to these recognised cases, there have been others which cannot be legislated for beforehand but which can only be justified after the event, as it is an illegal act which may be necessitated by circumstances. A captain once placed his C. O. in arrest for being drunk on parade, and his conduct was approved by the C. in C.

45, 21 The commander of a guard cannot refuse to receive any prisoner handed over to him for custody. He is required to send in the prisoner's name and crime, and the name of the person who committed him, to the C. O. within 24 hours after the commitment of any prisoner, or as soon as relieved. The person who commits a prisoner has to furnish the commander of the guard with the offence in writing, but neglect to do so does not absolve the commander of the guard from the necessity of receiving the prisoner into custody. Prisoners are not to be released without authority.

The standing custom in all garrisons is that prisoners confined in garrison guards can only be made over to their regiments by order of the staff officer who manages these duties, because the confinement may have been imposed by garrison authority such as military police, &c.

A person illegally or unnecessarily detained in confinement has a legal remedy at law, but law courts will not give damages for any honest exercise of military authority, even though exercised on mistaken facts and on wrong inferences, and though prejudicial to the prisoner. A prisoner must therefore have a very strong case indeed to obtain compensation by civil law.

The next step is the investigation of the cause of arrest which is to take place without unnecessary delay by the C. O. If the offence is a trivial one, it is dealt with by the officer commanding the offender's troop, battery or company; if of a more severe character, he is brought before the C. O. of the regiment. Prisoners are not

to be kept in confinement for more than 48 hours without an investigation of the charges brought against them, by their C. O. in the presence of the officer commanding their troop, battery or company, the adjutant and the prisoner; nor are they to be detained in military custody for a longer period than 8 days, except on active service, without a C.M. being ordered to assemble, or a special report showing 45
the necessity for the delay being forwarded by the C.O. to the general officer commanding.

Prisoners are not to be put on duty, but they are liable to carry their arms if necessary and to hand over any supplies of cash, stores, etc., for which they may be responsible. If by error a prisoner has been permitted to perform any duty he is not thereby absolved from liability to punishment for his offence.

The Duke of Wellington's opinion was that if an offender was called upon to perform any honorable duty, such as to take part in an action against the enemy, this should be held to condone the offence. This is now the general opinion, though legally the prisoner is not absolved by being put on such duty.

Arms are only restored to a prisoner by order of his captain or other superior officer.

In the case of a commissioned officer, the C.O. can either dispose of the matter himself or forward it for the opinion of superior authority. If the nature of the offence does not admit of disposal by admonition or reprimand, the officer must be tried by a G.C.M. or Field G.C.M. which are the only two descriptions of courts which can try commissioned officers.

It is usual to have a full inquiry by a board of officers before resorting to trial, to record facts and evidence; but it is not necessary that the officer should be tried whatever the opinion of the court may be.

If an officer thinks himself wronged by his C.O. and cannot receive from 42
him, after due application, the redress to which he considers himself entitled, he may complain to the C. in C., who, after inquiring into the complaint, will report to Her Majesty through a S. of S. and receive her directions.

If a soldier thinks himself wronged in any matter by any officer or soldier, 43
he may complain to his captain; if he thinks himself wronged by the latter then to his C.O., and ultimately, if he considers himself still wronged, to the general or other officer commanding the district, who will have to inquire into the matter. A soldier is in no way punishable for making a complaint whether it be frivolous or not.

Every description of military offence can technically be tried by any Military Tribunal, that is, by the C.O. or by any description of C.M.; at the same time, a limitation is imposed on the punishments which a C.O. or the lower descriptions of C.M. can inflict, and it is not the object of the Act that serious offences should in practice be summarily dealt with by the C.O. or be tried by R.C.M.; but that a higher or lower description of C.M. should be convened, according to the nature and degree of the offence.

A General Order lays down that in the disposal of a charge against a soldier of having committed an offence, commanding and other officers will be guided by the following rules:—1. A C. O. may, without reference to superior authority, dispose summarily of, or try by R.C.M., a charge of an offence under sections 11,* 15 (except absence without leave exceeding 21 days), 19, 24 and 40. A charge for any other offence will, excepting as provided for in para. 3, be referred to a superior officer. 2. A superior officer to whom a case is referred may deal with it as follows:—(*a*) He may refer the case to a superior officer, or (*b*) he may direct the disposal of the case summarily, or by R.C.M.; or (*c*) if he has power to convene a D.C.M., he may convene a D.C.M. to try it; or (*d*) if he has power to convene a G.C.M., he may convene either a G. or D.C.M. to try it. But an offence punishable with death or P.S. should not be disposed of summarily, or by a R. or D.C.M., excepting under the orders of an officer who has power to convene a G.C.M., or as provided for in para. 3. 3. In any case where a C.O. or a superior officer is of opinion that delay is inexpedient, he may

* Chapter VI.

dispose of the case without any reference to a superior officer; but in such case he must immediately report his action, and his reasons for it, to the officer to whom otherwise he would have referred the case. 4. The proper authority to convene a R.C.M. is the C.O. of the person charged, and although an officer who is authorized to convene a G.C.M., or to convene a D.C.M., has power to convene a R.C.M., he should, when he orders a case to be disposed of by R.C.M., direct the C.O. to convene the court, instead of convening it himself, unless the C.O. is unable to form an adequate court from the officers under his command.

POWER OF COMMANDING OFFICER.

46 A C.O. upon an investigation of a charge may dismiss it, if he so thinks fit, or he may take steps to bring the offender to a C.M., or in the case of a N.C.O., he may be admonished. A Colour-Sergeant or Troop or Battery Sergeant-Major may be reverted to the rank of Sergeant, these being only appointments. Provisional Acting N.C.O's who are unpaid, and only appointed on probation, are not liable to summary reduction by the C.O., but at the expiration of the period of their probationary appointment they are liable to revert to their former rank.

In the case of a soldier, the following summary punishments may be awarded :—

1. Impt. with or without hard labour for any period not exceeding 7 days (or 168 hours), but in the case of absence without leave, the award of impt. with or without hard labour may be extended to 21 days, provided the term of impt., if exceeding 7 days, does not exceed the number of days of absence;

2. For the offence of drunkenness, to pay a fine not exceeding 10 shillings, according to a certain scale laid down in regulations, in addition to or without impt.; but the latter is only to be awarded when drunkenness is in connection with other offences;

3. C.B. not exceeding 28 days, which carries with it punishment drill for 14 days;

Or C.B. for the same period, without punishment drill, for concealing disease, with or without an entry in the Regimental Defaulter's Book;

4. Deduction of his ordinary pay for special offences;

5. Extra guards or piquets.

REMARKS ON THE ABOVE PUNISHMENTS.

1. Impt. to be carried out in the provost cells, may be awarded for any offence, though reserved as much as possible for cases, of riot, violence or insolence to superiors, and absence without leave; in aggravated cases it may precede further punishment of C.B.;

When the impt. awarded exceeds 7 days, the soldier may demand that the evidence against him be taken on oath, and the same oath as that given to witnesses on a C.M. is to be administered. Up to 7 days impt. the award is in hours, beyond 7 days, in days.

2. All cases of drunkenness must be disposed of by the C.O., even when the offender is to be tried by C.M. for a more serious offence, unless he was drunk on duty, or when warned for duty, or unless he is to be tried as an "habitual drunkard," *i.e.* drunk 4 times within the past 12 months, *not* including the case under disposal.

Discretionary power is given to C.O's of counting offences of short absence without leave as equivalent to an act of drunkenness when imposing a fine, but such entries cannot be reckoned as instances of drunkenness for purposes of trial as an "habitual drunkard."

Periods of absence from duty by reason of impt., or absence without leave are not to count in any calculation for exemption from fine.

3. C.B. is considered sufficient punishment for slight offences; it may be combined with impt. (but the total punishment is not to exceed 28 days), deprivation of pay or fine.

4. Deprivation of pay is awarded for days of absence without leave, for days when in hospital for illness caused by an offence committed by him (mutilating himself), to make good loss or damage done to arms, ammunition, equipment, clothing or to any property.

Total amount of deductions not to exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day. For the purpose of deducting pay a part of a day is not reckoned as a day, unless it consists of six hours or upwards. 181

On board any ship in commission or not, he may be deprived of his liquor ration for 28 days, or, if he does not receive such ration, of one penny a day pay in lieu.

5. Extra guards or piquets can only be awarded as punishment for offences connected with guard or piquet duty.

A soldier ordered by his C.O. to suffer impt., or pay a fine, or any deduction from his pay, may appeal to a D.C.M. instead of submitting to such impt., fine or deduction.

An offender is not liable to be tried by C.M. for any offence which has been dealt with summarily by his C.O., and *vice versa*.

Awards by Troop, Battery or Company C.O.—By direction of the C.O., officers commanding companies may award punishment not exceeding 7 days C.B. to men under their immediate command, such awards to be invariably brought to the notice of the C.O.

PROVOST MARSHAL.

For the prompt repression of all offences which may be committed abroad, provost marshals, with assistants, may be appointed by the general officer commanding a body of forces. 72

These officers may at any time arrest and detain for trial persons subject to Military Law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a C.M., but cannot inflict any punishment on their own authority.

When attached to any forces on active service they may make a complaint to any officer in immediate command of any detachment or portion of such body of forces against any person subject to Military Law who has committed any offence, and such officer, if he considers it not practicable to assemble an ordinary C.M., may convene a Field G.C.M. to try such person summarily.

A sentence of death or corporal punishment may be carried into effect when confirmed by the General or F.O. commanding the force of which such detachment forms part, and if the sentence is not capital, when confirmed by any General or F.O. in such force.

A provost marshal may not refuse to receive or keep any person who is committed to his custody by an officer or N.C.O., and the latter should give the provost marshal at the time, or within 48 hours after, an account in writing signed by himself, of the offence. 45

CHAPTER IV.

COURTS MARTIAL.

There are 4 descriptions of Courts Martial:

1. Field General Court Martial.
2. General Court Martial.
3. District Court Martial.
4. Regimental Court Martial.

CONVENING COURTS MARTIAL.

119 Her Majesty is empowered to issue warrants authorising certain officers, viz.: the C. in C. and any officer not below the rank of F.O. commanding for the time being any body of regular troops within or without H. M. dominions, to convene a G. C. M. for the trial of any person subject to Military Law, and to confirm the findings and sentences of such C. M., or to delegate to any officer under his command not below the rank of F. O. the power to convene G. C. M., and to reserve their findings and sentences for his own confirmation or to delegate that authority also.

In any place without the U. K. where a F. O. cannot be had, a Captain may
119 have the same authority delegated to him as a F. O. Warrants may be addressed to officers by name or by designation of their offices.

48 Any officer authorised by warrant to convene G.C.M. may convene a D.C.M. and confirm the finding and sentence, and he may authorise any officer not below the rank of Captain to convene and confirm the finding and sentence of any D. C. M.

Warrants are issued annually; but the old warrant remains valid even should a new one not arrive.

The effect of a warrant is not influenced by its locality. An act may be committed outside the jurisdiction of the warrant, yet the prisoner may be tried under it.

49 A Field G.C.M. can be assembled by any officer commanding any detachment of troops beyond the seas, when in his opinion it is not practicable to assemble a G. C. M., although such officer may not have been authorised to convene a C. M., for the trial of a person subject to Military Law for an offence committed against the property or person of any inhabitant in the country.

Under Martial Law offences are tried by G. C. M. or Field G. C. M.

47 Any officer authorised to convene a General or a D. C. M., also any officer not below the rank of Captain, and on board a ship not in commission, a C. O. of any rank, may, without warrant, convene a R. C. M. for the trial of offences committed by soldiers under his command.

General Officers will, however, not themselves convene such C. M., but direct the C. O. of the soldiers' regiment to do so.

COMPOSITION OF COURTS MARTIAL.

43 A G. C. M. must consist of not less than nine officers who have held a commission for at least 3 years, provided that in the opinion of the convening officer, (such opinion to be expressed in the order convening the court) nine officers are not available, when it may consist of not less than five officers.

A D. C. M. must consist of not less than seven officers, if convened in the U. K., Inida, Malta or Gibraltar; elsewhere, if in the opinion of the officer convening the court (such opinion to be expressed in the order convening the court) seven officers are not available then five officers are sufficient, and, similarly, if five officers are not available then three are sufficient.

A R. C. M. must consist of not less than five officers, but similarly, as in the case of other courts, if five officers are not available then three are sufficient. 47

A Field G. C. M. must consist of not less than three officers. 49

The President of a C. M. is appointed by the convening officer, who cannot himself sit on the C. M. except in the case of a Field G. C. M. when he may preside.

The President of a General or D.C.M. must not be under the rank of F.O., unless the officer convening the court is under that rank, or unless, in the opinion of the convening officer (such opinion being expressed in the order convening the court), a F.O. is not available, in which case a Captain may be President, and if a Captain be not available an officer under the rank of Captain may sit as President of a D. C. M. Whenever General Officers or Colonels are available as Presidents of G. C. M., no officer of inferior rank is to be placed on that duty. 48

The President of a R C. M. must not be under the rank of Captain, except when held on the line of march, or on board ship not in commission, or unless (as above) a Captain is not available, in which case an officer of any rank may be President. 47

The President of a Field G. C. M, may be the convening officer himself, but when practicable he should appoint another officer as President, who may be of any rank, but he must not be below the rank of Captain unless a Captain is not available. 49

Whenever possible the members of a C. M. for the trial of an officer are to be of equal, if not superior rank to the prisoner, and in no case except one of necessity, is a Colonel to sit upon the trial of a General Officer, or a Captain on that of a F. O., or a Subaltern on that of a Captain. On the trial of a subaltern, two officers of that rank are considered a sufficient proportion to sit as members. The members of a court may, however, be of any rank superior to that of the prisoner. No officer under the rank of Captain can sit on a C. M. for the trial of a F. O.

When the C. O. of a corps is brought to trial as many members of the court as possible are to be officers who have themselves held, or are holding, commands equivalent to that of the prisoner.

No officer can sit on a C. M. unless he is subject to Military Law.

The officers sitting on a C. M. may belong to the same or different corps. For instance, an offender may be tried by a R. C. M., notwithstanding there is no officer on the court belonging to his corps. 50

A prosecutor or witness for the prosecution must not sit on a C.M., nor can he act as J.A.

Neither the C.O. of the corps to which the prisoner belongs, nor the officer who investigated the charges, can, save in the case of a Field G.C.M., sit on the court, nor can he act as J.A.

The senior combatant officer must be President. If there is a non-combatant officer senior, he must still only sit as a member.

If a member is promoted during the trial and becomes senior to the President no change is made in the constitution of the court.

The number of members ordered to sit on a C.M., within the statutory limits, is at the discretion of the convening officer; in important trials he frequently appoints a larger number than the regulations prescribe.

Notwithstanding such an extra number, if a member is challenged, and the challenge allowed, he must be replaced.

The court must not sit until the appointed number is made up, for a court must be in accordance with the orders of the convening officer, who always appoints the President by name and the number of members—unless the court can show good reasons for commencing without its proper number.

In 1847 a court sat with one member short, its reasons being that reference would have had to be made to the headquarters in India, and a long delay would have been necessary. The court was allowed as the reasons were considered valid and good.

The President of a C.M. for the trial of a warrant officer not holding an honorary commission must not be under the rank of a F.O., unless, as usual, a F.O. is not available, or unless the officer convening the court is under the rank of a F.O., but in no case can he be under the rank of Captain.

SCALE OF PUNISHMENTS.

44 Officers, if convicted by C.M., are liable to punishment according to the following scale:—

Death.
P.S. for a term not less than five years.
Impt., with or without hard labour, for a term not exceeding two years.
Cashiering.
Dismissal from H. M. service. (Cashiering is a stronger term than dismissal.)
Forfeiture of seniority of rank, either in the army or in the corps to which the offender belongs, or in both.
Reprimand or severe reprimand.

An officer cannot be sentenced to be suspended from duty or pay.

Soldiers according to the following scale:—

Death or corporal punishment.
P.S. for a term not less than five years.
Impt., with or without hard labour, for a term not exceeding two years.
Discharge with ignominy from H. M. service.
Dismissal, if a Volunteer, from H.M. service.
Reduction, in the case of a N.C.O., to a lower grade, or to the rank of a private soldier.
Forfeitures, fines and stoppages.

Provided that, where a particular punishment is specified for any offence, any one punishment lower in the above scales may be awarded.

Before an officer is sentenced to P.S. or impt., he must be cashiered.

Before a N.C.O. is sentenced to any other punishment he must first be reduced to the ranks.

An officer when sentenced to forfeiture of rank may also be sentenced to reprimand or severe reprimand.

A soldier sentenced to P.S. or impt., or to corporal punishment may in addition be sentenced to be discharged with ignominy.

Two punishments of distinctly opposite natures cannot, however, be awarded for the same offence, unless authorised by the Act. Thus, combined sentences of corporal punishment and P.S, or P.S. and impt. would be illegal. On the other hand, punishment by fine, stoppages, forfeiture of good conduct pay, or service towards good conduct pay, or pension on discharge; discharge with ignominy; and in the case of N.C.O.'s any reduction, may be joined with any other legal award.

A sentence of P.S., or discharge with ignominy, necessarily entails forfeiture of all claim as to good conduct pay, or pension, derived from former service, as well as forfeiture of any medals, annuity or gratuity; it would therefore be superfluous to add these forfeitures as part of the sentence.

A sentence of corporal punishment must not exceed twenty-five lashes, and is not to be inflicted on a N.C.O., nor on a reduced N.C.O., for any offence committed while holding the rank of N.C.O.

Corporal punishment can only be inflicted on active service and for offences punishable with death. On active service, therefore, a sentence of death or P.S. may be commuted to corporal punishment, and a sentence of corporal punishment may be commuted into impt., with or without hard labour, for a period not exceeding 42 days.

In addition to or without any other punishment, a G.C.M. or D.C.M. may sentence an offender to forfeit, for any period not less than 18 months, any good conduct badge or pay earned by past service, and all past service towards pension; also to forfeit any annuity, gratuity, medal or decoration; and all right to good conduct pay and pension on discharge, whether in respect of past or future service.

67 The term of P.S. or impt. to which a person is sentenced by C.M. commences on the day on which the President signs the original sentence and proceedings.

The term of impt. is limited strictly to two years, whether under one or more sentences, and a sentence of P.S. or impt. cannot be awarded to commence at the

expiration of a previous sentence, except when a sentence of corporal punishment is commuted to impt., when the commuting authority may direct the commuted sentence to commence at the expiration of the impt. under a previous sentence.

Supposing, therefore, a court desires to impose a fresh sentence of impt. (say 3 months) on a prisoner already under a sentence of 3 months' impt., the court must impose a sentence of 6 months, and similarly with respect to a sentence of P.S.

In ordinary cases it is considered that the term of impt. should not exceed 6 months, with or without hard labour, or with such hard labour as, in the opinion of the medical officer of the prison, the prisoner is equal to.

A soldier under a sentence of impt. may be removed to any place beyond the seas where his corps, or part thereof, may be serving, as it is considered that soldiers in prison for military crimes may be given a fresh opportunity of recovering their character by being at once removed to a foreign station. 66

No restriction is made on the possible duration of a sentence of P.S.

A soldier guilty of desertion or fraudulent enlistment upon his conviction by C.M., or having confessed his offence, upon his trial being dispensed with, forfeits the whole of his previous service, and begins again as if he had been enlisted at the date of his conviction, or at the date of the order dispensing with the trial, and he is also then liable to general service. 76

A S. of S. may, however, restore all or any part of the service forfeited to any soldier after good and faithful service, or for any other merited cause, or a C.M. may recommend a soldier to such restoration of service.

Application of the Act to N.C.O's. 175

A C.O. cannot deal summarily with a N.C.O. charged with drunkenness.

The C. in C. may reduce any N. C. O. to any lower grade, or to the ranks. When reduced to a lower grade he takes precedence in that grade.

A N.C.O. may be reduced by the sentence of a C.M. to any lower grade, or to the ranks, either in addition to or without any other punishment.

An Army Schoolmaster cannot be reduced to the ranks, but the C. in C. may dismiss him or sentence him to forfeit service towards pension.

Application of the Act to a Warrant Officer not holding an honorary commission. 174

He cannot be punished by his C. O., nor tried by R. C. M.

He is not liable to corporal punishment, but he may be sentenced to be dismissed the service, suspended from rank pay and allowances, or to be reduced to the bottom or any other place on the list of the rank which he holds, or to be reduced to an inferior class of Warrant Officer, or if he originally enlisted as a soldier to be reduced to the ranks or to be transferred to a corps in the same arm of the service, and in the same rank as that in which he served immediately before his transfer to be Warrant Officer, but a Warrant Officer so reduced to the ranks cannot be required to serve in the ranks as a soldier.

Application of the Act to persons who do not belong to H.M. forces. 176

Any person subject to Military Law who does not belong to H.M. forces, such as camp followers, may be tried by any description of C.M. other than regimental, convened by an officer authorised to assemble such description of C.M.

Any such person, when attached to a corps, is under the command of the C. O. of that corps, and if not attached to any corps he is under the command of any officer named by the general or other officer commanding the force.

FORFEITURES, STOPPAGES AND FINES.

Forfeitures relate to: 134

1. Forfeiture of service towards limited engagement.
2. Forfeiture of service towards pension.
3. Forfeiture of ordinary pay.
4. Forfeiture of good conduct pay and gratuities.
5. Forfeiture of military decorations and rewards.

Forfeiture of service towards limited engagement has already dealt with.

Forfeiture of service towards pension, of good conduct pay r ..uities, also of military decorations and rewards, have been left in the Act ealt with by Royal Warrants or Queen's Regulations, as these are in the r ..f rewards, and not of the essence of a soldier's service.

Fines are only inflicted in case of drunkenness, for w.. .. any C. M. may inflict a fine not exceeding one pound.

159, 160, 161 The Act legalizes the recovery of fines or forfeitures before a court of summary jurisdiction (*i.e*, before petty sessions or a magistrate), and in case of non-payment, impt. not exceeding 3 months may be imposed.

Stoppages of pay are inflicted for the purpose of making good any articles obtained by fraudulent enlistment, any loss, damage or destruction to any property or goods, or to arms, ammunition, clothing, &c., through misconduct or neglect; also, for any medal or decoration made away with or lost by neglect.

PENAL STOPPAGES FROM ORDINARY PAY.

133 *Officers' pay.*—When absent without leave, unless a satisfactory explanation has been given through the officer's C. O.—when awarded by C. M. to make good any loss, damage, &c.,—to make up any pay which he may have wilfully retained or unlawfully refused to pay.

134 *Soldiers' pay.*—For every day of absence on desertion or without leave, as prisoner of war, every day of impt. awarded by Civil Court, C. M., or C. O., or under detention for any offence of which he is afterwards convicted by Civil Court or C. M.

For days in hospital on account of sickness caused by an offence committed by him; such as drunkenness, wilfully maiming, &c.—*i.e.*, a soldier may be ordered to forfeit his pay whenever he does not perform the service for which he is paid, owing to his having committed a crime or incurred illness by an offence [as mutilating himself, &c.]

Sum required to make good any loss damage or destruction awarded by C. M. or by the authority which dispenses with his trial.

Sum required to make good any loss, damage or destruction to arms, ammunition, equipment, clothing, instruments, regimental necessaries and military decorations, or to any building or property, awarded by his C. O., or in case he requires to be tried by C. M., by that court.

Sum equivalent to soldiers' liquor ration, or pay in lieu of that ration, stopped by his C. O. on board any ship commissioned or not, not exceeding one penny a day for 28 days.

Sum required to pay a fine awarded by a Civil Court, C. M. or C. O.

Sum ordered to be paid by a S. of S. for maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child.

The amount of all deductions must not exceed such sum as, after paying for his messing and washing, will leave the soldier less than one penny a day.

135 Subject to instructions from a S. of S., a C. M., or, where a soldier is not tried, his C. O., may remit the whole or any portion of any deduction of pay when it appears just to do so, or for the good of the service,—that is, subject to instructions, a C. O. may remit forfeitures of pay for absence without leave.

FORFEITURE OF SERVICE TOWARDS PENSION, OF GOOD CONDUCT PAY AND GRATUITIES, ALSO OF MILITARY DECORATIONS AND REWARDS.

44 On conviction of a soldier of desertion, fraudulent enlistment, wilfully maiming himself or any other soldier, tampering with his eyes, or of felony, or when sentenced to P. S., or to be discharged with ignominy, or in consequence of his incorrigible or worthless character, or on conviction by Civil Power, he forfeits all past service towards good conduct pay and pension, and all military decorations and rewards.

On conviction of desertion, a soldier forfeits all monies in the Regimental Savings Bank.

A soldier confessing desertion, whose trial is dispensed with, incurs the same forfeitures as a convicted deserter.

For any period of absence without leave exceeding 5 days, and for any period of confinement awaiting trial, if convicted, a soldier forfeits service towards good conduct pay and pension; and also, for any days of absence for which deprivation of pay has been awarded by the C. O. During impt. under sentence of a C. M., or of a Civil Court, or by order of the C. O., a soldier forfeits service towards good conduct pay and pension. A soldier convicted of any offence forfeits a good conduct badge, or if not in possession of one, he is rendered ineligible for it for two years.

Service forfeited towards good conduct pay and pension may be restored for subsequent good service by the S. of S., and such restoration carries with it restoration of deferred pay.

Deferred pay is not credited to a soldier for days on which he is not allowed to reckon service towards good conduct pay and pension.

JURISDICTION OF COURTS MARTIAL.

A G. C. M. may try any person subject to Military Law, and award any punishment permitted by the Act. 48

A D. C. M. cannot try an officer nor award death or P. S.

A Field G. C. M. may try any person subject to Military Law under the command of the convening officer, and award any punishment. 49, 72

A R. C. M. cannot try officers or warrant officers, nor any person not belonging to H. M. forces. 47, 174, 176

It cannot award death, P. S., discharge with ignominy, nor forfeiture of any good conduct pay, or service towards pension, nor of any military decoration or reward. The term of impt. it can inflict is limited to 42 days.

Any person subject to Military Law in H. M. dominions may be tried by a competent Civil Court for any offence for which he would be triable if not subject to Military Law.

A C. M. can try a person subject to Military Law for *any* civil offence except murder, manslaughter, treason—felony, or rape, committed in the U. K. or Gibraltar. If elsewhere in H. M. dominions he can be tried by C. M. for these offences, when on active service, or if the place is more than 100 miles, measured in a straight line from any town in which he can be tried by a competent Civil Court. In any place beyond the seas he may be tried for any offence committed against the property or person of any inhabitant or resident in such country. 41, 49

Any offence against the property or person of inhabitants of the country must be charged under Section 6*, for trial by Field G. C. M., notwithstanding that it is a civil offence within the meaning of Section 41, whether murder, rape, robbery with violence, &c.

A person who has been acquitted or convicted of an offence by a competent Civil Court, or by a C. M., or if he has been dealt with summarily by his C. O., is not liable to be tried again by C. M. for the same offence. 46, 150, 155

A person subject to Military Law is not, however, exempted from the Civil Law by reason of his military status, and he is liable to be proceeded against by the ordinary course of law after conviction for any offence, except for an offence declared in the Act not to be a crime relating to taking a soldier out of H.M. service. The Act, however, specifies that in awarding punishment, a Civil Court must have regard to any previous sentence passed by a Military Court. 41, 155

If a person subject to Military Law commits a military offence, he may be tried and punished for that offence although he may have ceased to be subject to Military Law, provided he be tried *within three months* after he has ceased to be subject to Military Law, except for mutiny, desertion or fraudulent enlistment, for which he may be tried at any time; also, if the offender be discharged or dismissed from H. M. service, and is also sentenced to P.S. or impt., he remains subject to the Act 151

* Chapter VI.

during the term of his sentence. This rule is very necessary, as a soldier repeatedly changes his status from soldier to civilian and from civilian to soldier. In the regular forces this change takes place when a soldier is transferred to the reserve, and when he comes back to the army from the reserve. A militiaman is, as a rule, only for a short time in every year under Military Law, and returns again to civil life. The volunteers are constantly changing their status, as they are subject to Military Law when acting with the regular forces, and are not subject to that law under ordinary circumstances, except when on actual service. Military Law is not local, like Civil Law, and an offender may be tried by C.M. for an offence at any place which is within the jurisdiction of an officer authorised to convene G.C.M., just as if the offence had been committed where the trial by C.M. takes place, but the punishment inflicted by such court must not be greater than if the offender had been tried where the crime was committed.

151 No person can be tried by C. M. for any offence committed more than three years before the date at which the trial begins, except in the case of mutiny, desertion or fraudulent enlistment, which may be tried at any time. With respect to desertion, however, if a soldier has served continuously in an exemplary manner for three years in the regular forces, he cannot be tried for any previous offence of desertion unless he deserted on active service, *i.e.*, unless he has been guilty of one of the greatest crimes of which a soldier can be guilty.

In the same way, after three years' exemplary service he cannot be tried for any previous offence of fraudulent enlistment, though, of course, his service is only reckoned from the date of his fraudulent enlistment.

Thus, the only two offences for which a soldier is triable after the expiration of any period of time are mutiny and desertion on active service. A civilian who is a deserter may, however, be taken into custody and tried at any time.

C.M. are not bound by the Indian Evidence Act, nor by any other Acts except those of the English Parliament.

There is no appeal against the decision of a C.M., but a soldier can make a complaint at the trial, and at the next General's inspection, when an appeal against the court may be made. The matter would then be gone into by a staff officer, and it would then generally be referred to the confirming officer, and then to higher authority.

CHAPTER V.

PRELIMINARIES TO TRIAL.

When the complaint preferred against an officer or soldier does not admit of explanation, and is not summarily disposed of, the officer commanding the regiment or detachment applies to the general officer commanding for a General or D. C. M., as the case may be, or in the case of a soldier under his own authority, assembles a R. C. M. when the offence does not appear to require more serious notice. A specific charge must be preferred against the prisoner and C. O's are prohibited from giving in vague charges against any one with a view to screen him from the legitimate consequences of his offence.

Charges are as a rule framed by the person who investigates the case, that is usually the C. O. or his Adjutant for him.

If the prisoner is to be tried by R. C. M. no one interferes as the case only comes forward for supervision in the monthly C. M. Return, and also at inspections when the books are gone through.

All charges preferred against any officer or soldier, and the circumstances on which they are founded, are examined by superior authority for higher courts, and the evidence should be sufficiently conclusive to justify the arraignment of the accused before a C. M. The officer who has power to convene the court investigates the charges in their broad bearings, and he is responsible that the charges are valid and within the cognisance of the Court.

The officer so investigating the charges is enjoined to be careful to avoid any expression of opinion as to the guilt or innocence of the prisoner.

Charges, for G. C. M. in the U. K., together with the evidence, are submitted to the J. A. G., who has to decide whether they are properly framed, cognisable by the Court, &c.

The evidence must always be sufficiently conclusive to justify the arraignment; a man should not be tried on the chance of getting a conviction except under perfectly unavoidable circumstances, or when it is advisable to set an example or to clear a man's character.

FRAMING CHARGES.

Charges brought before a C. M. are not bound to the technical formalities which prevail in other Courts of Law, but they should be sufficiently specific to enable the prisoner to know what he has to answer, and to enable the Court to know what they are called upon to inquire into. Charges should also express the nature of the crime so clearly as to show that the offence is directly contrary to the provisions of the Act; great care is therefore required in identifying the offence, that is, in deciding under which section of the Act to frame the charge.

It is desirable in framing a charge, to follow the wording of the particular section of the Act under which the offence falls; in any case, the crime as framed, should be clearly cognisable under some section of the Act, and it is indispensably necessary that the charge should set forth not merely the acts done or omitted to be done, but also every fact and circumstance which it is necessary to prove, in order to convict of the offence. Any circumstances, however, which tend to aggravate or mitigate the offence are to be omitted. Archibald's Rule:—"All the ingredients of the offence, the facts and circumstances and the intent must be set forth with certainty and precision and without any repugnancy or inconsistency, and the defendant must be charged directly and positively with having committed it."

Words essential to the constitution of the offence must not be omitted. For 17
instance, misapplying money or stores must be framed—fraudulently misapplying; the omission of the word fraudulent makes it no offence chargeable by Military Law.

Maiming or injuring must be—wilfully maiming. Absence must be—absence without leave. The omission of such words deprives the charge of its very essence and does not, without them, constitute a breach of a section of the Act.

Charges for crimes mentioned by name in the Act are as simple as words can make them. For offences not specially provided for in the Act, the charge must come under Sec. 40*, and must be prefaced with the words "conduct to the prejudice of good order and military discipline."

In framing charges care must also be taken to render them clear in names, dates and places, but all non-essential minutiæ are to be avoided.

The prisoner's name is to be stated at full length, with his rank, preceded in the case of a N.C.O. or soldier, by his regimental number. Whenever a soldier holding acting rank is brought to trial, he is arraigned in his acting rank, but a soldier holding an appointment is arraigned in his army rank with his appointment also designated.

In cases where a man has had several *alias*', it has been ruled that, where the identity of a prisoner fully and indisputably appears, it is quite immaterial whether he is tried by his real name or by a fictitious name or by two or more names; but the name in which a soldier is attested should always be entered.

In Field G.C.M. if the name of the person charged is unknown, he may be described as unknown with such additions as will identify him, as: "Person accompanying the force (name unknown), white jacket and trousers, scar on right cheek."

Where a prisoner is charged with any loss or damage, the amount of such loss or damage must appear in the charge and be proved in evidence, except with respect to articles of kit, necessaries, arms, clothing, &c., the prices of which are fixed by regulation when the price need not appear. In the case of loss or damage to great coats, or articles of which the regulation value depends upon the length of time in wear, the time such article has been in wear must be proved in the evidence, the value appearing in the charge. In the case of the loss of a medal, the value of the medal is to appear in the charge. The prisoner would be sentenced to make good the value of the medal, and such sum is credited to the public, but the medal is not replaced except under special circumstances to be determined by the C. in C. with the concurrence of the S. of S. for War.

The precise hour or minute of the commission of the crime should only be inserted in the charge when it constitutes the essence of the offence, or when it is necessary for the prisoner's defence; as in the case of a sentry leaving his post before being regularly relieved, allowing a prisoner to escape, sleeping on his post, &c.

An offender may be tried on alternative charges when they relate to the same offence, but he cannot be tried on disjunctive alternative charges, that is, on two or more totally different charges in the hope of convicting him of one of them. For instance, if a soldier is found in possession of stolen property and it is not certain that he committed the theft, he would be tried on two charges, the first would be for having stolen the property, the second for having feloniously received the property knowing it to have been stolen, and if convicted on one of these charges he would necessarily be acquitted of the other. Again, in the case of deficiency of kit there should be two alternative charges: 1st., for making away with (which includes selling, pawning, &c.,) and the 2nd for losing by neglect. If convicted of one he should be acquitted of the other charge. But a canteen sergeant or a pay sergeant deficient of funds, could not be tried on two such charges as: 1st, for causing the loss by carelessness in keeping the accounts, and 2nd, for having embezzled the amount deficient, in the hope of convicting him of one or other of the charges; for carelessness in keeping the accounts and embezzlement are two widely different offences. A prisoner may be placed on his trial, at the same time, for several offences of distinct natures, but each offence must form a separate charge, and separate charges must, on no account, be blended in one and the same charge, as offences against different sections of the Act must never be coupled in one charge.

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* Chapter VI.

A not uncommon practice, leading to confusion, was to frame a charge with instances, as "disgraceful conduct in the following instances." This is not a convenient mode, and it is preferable to make each instance a separate charge. Combining two or more instances in one charge of course assumes they are breaches of the same section of the Act, forming one transaction with two cases of disgraceful conduct in it.

Minor offences, such as the C. O. could dispose of, are not to be included with graver offences, for if acquitted of the graver and not of the minor the court is in difficulty as to the punishment to award.

When more prisoners than one are tried separately by the same C. M., the court is in all cases to be re-sworn at the commencement of each trial, and the proceedings of each trial are to be conducted and recorded separately. Any number of prisoners may be tried together on the same charge for an offence committed collectively, but the plea, finding and sentence must be recorded separately for each. Practically, however, this is not found sufficient, as it is usual for the General in Command to require the court to give a complete separate record for each prisoner. The advantage of trying them collectively in that case is that many writers can be at work at once.

ORDER FOR THE ASSEMBLY OF THE COURT.

General and D. C. M. are assembled by an order of the officer duly authorised in that behalf. This order specifies the description of court, the purpose of its assembly, and either fixes the date, time and place of meeting, and appoints the President by name, and the number and rank of the officers to be furnished by different regiments as members, or otherwise, leaves these details to be arranged by the officer in whose command the court may be directed to assemble.

Regimental and station or detachment orders are in like manner issued for the assembly of R. C. M., and in this case all the officers to form the court are mentioned by name equally with the President.

A C. M. may be assembled in any place where troops may be serving except on board H. M. ships in commission, when all power of punishment is vested in the senior officer of the ship.

It is not necessary that the trial should be held in the same place in which the crime was committed, as Military Law operates against offenders, not as inhabitants of this or that district, but as soldiers of H. M. Service.

On G. C. M. at all times, and on minor C. M. when there is a prospect of protracted proceedings, it is desirable that a number, exceeding that legally necessary, should be detailed as members to guard against the inconvenience which might arise from the sickness or death of a member. The additional members take part in all the proceedings. One or more officers are sometimes detailed in waiting to provide for casualities, or for the case of challenge being allowed.

It is directed that C.M. duty is to be detailed after regimental duties under arms, and that in all duties, *the roster is to commence from the senior downwards.* This precludes the possibility, without a glaring breach of the express orders of the Sovereign, of selecting or packing a C. M.

Should the Court be packed, *i.e*, individual members nominated not according to roster, the prisoner may complain that the court is not appointed according to regulation, and this plea, if well founded, would be valid,—for to pack a court involves the legality of the trial.

The general officer, when referred to, may say that he required such and such officers for other special duties, etc., and if such be really the case, the prisoner's objection does not hold good.

When it appears desirable that the court should have a view of any place in order to their better understanding the evidence that may be given upon the trial, the court may view such place. 53

WARNING THE PRISONER FOR TRIAL.

Upon any trial by C. M. being ordered, the C. O. of the corps to which the accused belongs or is attached, is responsible that the accused is furnished by the Adjutant or by a commissioned officer with a copy of the charges against him at least 24 hours before the trial, unless the exigencies of the service render this impossible.

To a soldier who cannot read, the charge is to be read, and if necessary explained by the person who warns him for trial, and a list of all witnesses for the prosecution is at the same time to be given to the prisoner. He is also asked what witnesses he wishes to be warned for the defence; not that the prosecutor has any right to know the prisoner's witnesses, but they are asked for so that they may be duly warned. The prisoner is not confined to the list he names at the time, but the court *need not* adjourn to enable him or the prosecutor to summon witnesses whom they might have called at first.

Formerly it was usual before the assembly of a G. C. M. for the J. A. to give the prisoner a copy of the charge. He would still do so on the principle that he has to see a fair trial.

Any omission in the list of the prosecutor's witnesses, or as to the length of notice, would not invalidate the trial unless the prisoner is actually and materially prejudiced in his defence thereby, and would not receive a fair trial from these circumstances.

It is not only necessary to give the prisoner the names of witnesses before the trial, but if he applies for it, he must also be furnished with *the substance* of the evidence against him, but he must properly and formally demand it. This is in strict accordance with the practice of the criminal courts, for there is a statute on the subject which states that a prisoner can demand the copies of depositions against him on payment, and also he and his counsel can, at the time of trial, inspect the depositions against him.

A prisoner has a *legal right* of access to his witnesses before and during the trial (*i. e.*, not in court, but between its [sittings) but for this he must demand to do so, otherwise he has no excuse.

A C. M. has no control over the nature of arrest or confinement of a prisoner, the C. O. of the regiment being responsible for this. The court has only control over the prisoner when before it, and then the prisoner must have perfect freedom. In some cases prisoners have appeared handcuffed; these should be removed. Should he afterwards become violent he may have his liberty restrained.

WITNESSES.

Persons, civil and military, are summoned by the Deputy J. A. or Officiating J. A. in cases of G. C. M., and by the President in all other courts, except in Field G. C. M. when they are summoned by the Provost Marshal.

1-2 Civil witnesses during attendance, and in going or returning, are privileged from arrest on civil process, not from arrest on a criminal charge, but only from arrest for not paying what they may have been ordered to pay by a court called "contempt of court."

123 If civil witnesses refuse to attend after payment of their expenses, refuse to be sworn, or do not answer questions or produce documents, &c., which can be legally demanded, or if they, or any other civilians present are refractory, cause disturbance, do not obey the injunctions of the court, or are guilty of any contempt of court, they are liable to be attached by the President before a Civil Court having power to commit for contempt. Should such persons give wilful false evidence they are liable to be convicted of perjury.

It is not necessary or usual to send a formal summons to military witnesses, it is usual to insert a clause in the order convening the court for them to attend. When a soldier required as a witness is not serving in the district in which the C. M. is to be held, application is made to the General Officer commanding in the district in which

such soldier is serving, for him to attend, naming the probable day of assembly of the court.

Should any person subject to Military Law, when duly summoned as a witness, 28
not attend, refuse to take an oath, or to produce any document, or answer any questions which may be legally required of him, or is guilty of contempt of court by using insulting or threatening language, or by causing any interruption or disturbance, he is liable to be tried by a C. M. other than the court before whom the offence is committed.

Should a prisoner be guilty of such conduct, the court would be adjourned and a report made to the convening officer. But where such a person, whether present as a witness or a bystander, or in any capacity other than as a prisoner, is guilty of contempt of court (as above), instead of the offender being tried by another C. M., that court may, by order signed by the President, sentence him to impt. with or without hard labour for 21 days.

After being duly summoned as a witness there is no exemption from attendance. It has been ruled that not even Governors of Colonies, C's. in C. or convening officers, are exempt from being summoned as witnesses, and all are bound to attend; but they are not bound to disclose matters connected with their governments or commands.

In 1837 a circular was issued on this subject, but owing to the C. in C. in India, being summoned unnecessarily, an extra provision was inserted that any officer or soldier so doing is liable to be tried for vexatiously summoning the C. O. of troops.

The form of summons to a civil witness must be served in person and in reasonable time before the assembling of the court. The summons must be delivered to the person himself; it is not sufficient, for instance, to give it to a wife for her husband.

Any person present in court may be summoned as a witness then and there without notice. Thus, the members are not precluded from being witnesses for or against the prisoner, though it is advisable that, as far as possible, they should be totally unconnected with the case; also, if possible, no officer who is to be called as a witness should act as prosecutor.

A discretionary power as to the summoning of witnesses must necessarily rest with the deputy J. A. or the President, as the case may be. They have the authority to dispense with the summoning of many witnesses and withhold their summons if they are not likely to be of use. The court can, however, rectify any omission subsequently, by adjourning until the necessary witnesses have been summoned; but care has to be taken, in refusing to summon witnesses, that the prisoner does not thereby suffer any material harm.

In military courts the expenses of summoning witnesses are generally paid for by the public, but in a great case where the expenses are many, if the prisoner is convicted, he has to pay all the expenses of his witnesses. In civil courts prisoners have always to summon their witnesses at their own responsibility and expense.

All witnesses are to be sworn, the oath being administered by the deputy J. A., President, or some member of the court authorised by the President.

When a witness gives his evidence he should answer the question as one put to him by the prisoner or prosecutor, but will address his reply to the court.

THE JUDGE ADVOCATE.

The J. A. G. and his Deputy are always civilians, while the Deputy Judge Advocates who attend at G. C. M., are always military men.

The J. A. G's. Department forms a Court of Appeal, and therefore takes no part in the actual preparation, conduct or management of prosecutions.

The J. A. G. is a member of the Privy Council, and all proceedings of G. C. M., which must be confirmed by the Sovereign are sent to the J. A. G., and the Sovereign confirms on *his* responsibility as a Minister of the Crown, and acts on his recommendation. The J. A. G. is responsible to Parliament, hence a prisoner if wronged, can appeal at law against him, for the Sovereign can do no wrong.

The duties of the J. A. G. are confined to an examination of the proceedings as to their legality, whether the sentences are within Statute Laws, &c. The expediency of carrying out the sentence, or as to remission, &c., is not his province. The C. in C. advises the Crown on these points.

The presence of an officiating J. A. duly appointed, who must be a commissioned officer, is essential to the jurisdiction of a G. C. M. held out of the U. K.

The appointment of a J. A. may at any moment be revoked by the authority who made it, and a J. A. may be relieved during the course of a trial and another appointed.

The J. A. does not form a constituent part of the court but is an officer of the court,—he is always appointed by warrant, which is a legal necessity to show his authority, and this warrant is invariably read in court. Out of the U. K., General Officers are empowered by warrant to appoint officiating J. A's. In the U. K. the J. A. G. appoints one of his three deputies to act for him, and he is responsible for them.

An Officiating J. A. has the same powers and duties as a Deputy J. A.

No person acting as prosecutor or being a witness for the prosecution, can act as J. A. at a trial.

At a C. M. where a J. A. is present he makes all preliminary arrangements, summons the witnesses, provides, or, if necessary, hires accommodation for the court, provides stationery, &c., and sees that all preliminaries are attended to. At the conclusion of the trial he transmits the proceedings, for the proper record of which he is responsible, if in the U. K., to the J. A. G. for the decision of the Sovereign, if abroad to the General in Command, or other officer vested with authority to confirm the sentence.

The proceedings are signed by the President and also by the J. A.; and the latter also signs all separate documents belonging to the proceedings. It is usual for him to obtain the signature of the President to the finding and sentence of the proceedings as prepared in court, and before the rising of the court, and he then afterwards prepares a fair copy. The two copies are then compared and the fresh copy signed by both; the fair copy is then sent for confirmation. At foreign stations it is usual for the General to require the J. A. to give him a copy of the proceedings for record in his office; usually the rough copy prepared in court does for this.

In the U. K., as has already been said, the Deputy J. A. transmits the proceedings with as little delay as possible to the J. A. G. in London, for confirmation. Abroad they are sent to the J. A. G. after confirmation and promulgation.

121 The J. A. G. carefully preserves all proceedings of G. C. M. for at least seven years, and those of D. C. M. and Field G. C. M. for three years.

The J. A. at a C. M., whether consulted or not, will give his advice on any question before the court. The opinion of an Officiating J. A. should be conclusive on any point of law or procedure.

When there is no J. A., the President is responsible for the due formality and legality of the proceedings, but when a J. A. is present he is responsible, although this does not release the President from the responsibility of remonstrating with the J. A. on any question he, or the court, may consider contrary to law, though in all matters of law the J. A's. opinion is final. Members of C. M. should, however, bear in mind that by acting upon the opinion of the Officiating J. A. on questions of law, they are not thereby exonerated from their responsibility, for whatever degree of deference may be due to the advice of the Officiating J. A., it must be remembered that he is not responsible to any court of justice for the opinion he may give. Should a C. M. decline to act upon the advice of the J. A., it then becomes his duty to transmit, with the proceedings, to the J.A.G., if in England, or to the confirming authority abroad, a statement of those circumstances which he considers material as affecting the legality of the proceedings.

When the prisoner is undefended the J. A. has to take care that the prisoner does not lose any privilege that the law allows him in the conduct of the trial owing to ignorance. At the conclusion of the prosecution and defence he sums up the whole of the evidence and gives his opinion upon the legal bearing of the case before the court proceeds to deliberate upon its finding. While taking care that all legal details are strictly observed, he must maintain a strictly impartial attitude.

Sometimes, when the case before a D. C. M. is complicated and the court gets into difficulties, the President adjourns it, and applies for a J. A. On his coming into court the proceedings are gone over again, and the prisoner may then revert to questions about which he was not satisfied.

THE PROSECUTOR.

The duties of the prosecutor may devolve either upon the prisoner's C. O., or upon a staff or other officer detailed to perform the duty. At D. C. M. or R. C. M., the Adjutant of the prisoner's regiment is usually the prosecutor. In all cases the prosecutor must be subject to Military Law and the prosecution must be considered at the suit of the Crown. If possible, no officer who is to be called as a witness is to be appointed to act as prosecutor. When the prosecutor is a witness for the prosecution, he should be sworn after his opening address, if any, and should give his evidence as the first witness for the prosecution. The President or a member of the court may also be called upon as a witness, and if so he is sworn as such.

If during the trial illness prevent the attendance of the prosecutor, another officer may be appointed to perform the duty.

The J. A. and prosecutor must not be the same person.

The prosecutor gets up the case, conducts the prosecution, and he has to obtain a conviction by all legal means in his power, and he furnishes the J. A. with a list of his witnesses. He examines his own witnesses by questions, and cross-examines those of the prisoner, and explains by addresses to the court, when required, the bearing of any particular point in evidence on the case. In ordinary cases the prosecutor calls on the witness to make a statement: "State what you know concerning the charges against the prisoner which you have heard read." Statements are not strictly legal but usually done.

The prosecutor's name is given in the record of the proceedings.

THE PRISONER.

No proceedings in open court can take place in the absence of the prisoner. Even though he may have been in close confinement, or in irons, he has a right during his continuance in court, to be unfettered and free from bonds or shackles of any kind, unless there be danger of escape or rescue, or unless his violent or outrageous conduct renders restraint unavoidable.

Although a prisoner may have a professional adviser to assist him during the trial, such adviser is not permitted to address the court, or to examine witnesses orally, which must be done by the prisoner himself.

INTERPRETER.

An interpreter may be employed at any period of the proceedings, if required by either party, or judged necessary by the court. He must be sworn or make a solemn affirmation before being required to interpret. A member of the court is not disqualified from acting as interpreter, but it would be attended with great inconvenience, and might possibly bring him into collision with the parties, if he were to act as interpreter throughout any extended proceedings. Neither the prosecutor nor any other interested party can act as interpreter. The J. A. being required to maintain an impartial position, is also precluded from acting as interpreter.

THE COURT.

No C. M. is to proceed to trial until they have satisfied themselves of their competence to deal with the charge, both as respects their jurisdiction, and the precision with which the charge is worded, so as to enable the court to know with certainty the issue to be tried, and to frame a finding and judgment thereon. The initiative of such questions rests with the President, and he must also satisfy himself that the court is legally constituted both as regards the authority constituting it and the number and qualifications of members.

With the exception of mere clerical corrections, C. M. have no authority to arraign a prisoner upon charges which have in any way been altered after he has been ordered for trial, unless such altered charges have been sanctioned by the con-

vening authority who may amend the charges, or add fresh ones, at any time before the prisoner is arraigned, but not afterwards.

So long as a C. M. does not exceed its jurisdiction, no other court is competent to stay its proceedings or to revoke its sentence, but the members are collectively and individually responsible to the Supreme Courts of Civil Judicature, not only for any abuse of power, but also for any illegal proceedings, but so long as the proceedings are legal all officers composing the court are exempt from proceedings at Civil Law for what they do or say in the discharge of their duty.

163 Any prosecution instituted against officers acting under the Act must be commenced within 12 months of the commission of the act complained of.

The President of a C. M. is charged with the duty of conducting the trial and with the maintenance of proper order. He seats the members according to rank, allows no questions to be put to witnesses except through him, collects votes, and as the prisoner seldom has a legal adviser, he is required to hold throughout a strictly impartial position towards him and the convening officer. He should also see that the prisoner is (as far as he knows) subject to Military Law, and is charged with an offence against that law. He is the channel of communication between the court and the convening authority; he is responsible that every person attending the court is treated with proper respect; he signs the proceedings. Where there is no J. A. he summons and swears the witnesses and members, and forwards the proceedings for confirmation; he is also responsible that a proper record of the proceedings is made, and he is the recognised adviser of the court in law and procedure; in fact, besides his own particular duties, he acts for a J. A.

53 All deliberations, of the court take place with closed doors. At other times, except to those persons who have been summoned as witnesses, a C. M., like other courts of criminal jurisdiction, is an open court and is open to the public, subject to the amount of room available and the convenience of the court and parties before it. The President orders the clearing of the court for deliberation on any incidental discussion when he may deem it expedient, or at the instance of a member or the J. A. It is competent to a C. M. to forbid the publication of a report of the trial during its continuance, and if the court notifies this to the audience and warns in writing the publishers of newspapers, such decision is binding, and any offender may be proceeded against criminally in the Court of Queen's Bench. The general practice is, however, to admit reporters without imposing any restriction.

Except to disallow the prisoner's objection to the President, and to pass sentence of death, where two-thirds of the members must concur, all questions are decided by a majority of votes. Should the court (which usually consists, when sworn in, of an uneven number of members), be reduced by death, sickness, or challenge, to an even number, and their votes be equally divided, the prisoner would have the benefit of having his objection allowed in the case of a challenge and the benefit of an acquittal in the case of a finding. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the President has a casting vote, from the necessity of arriving at such a conclusion as will permit the progress of the trial.

In taking the votes of the court, the President is to begin by that of the youngest member.

Each member [for himself] is required to form an opinion from the evidence adduced of the prisoner's guilt or innocence on any or all of the charges, and give his vote when called upon by the President.

Whenever a C. M. is deprived of its President, the court must adjourn for the convening officer to appoint a fresh President, as the President is always appointed by name; but should a C. M., consisting of more members than the number legally required, be deprived of its President, the senior member, if qualified by rank, &c., may be appointed President by the convening authority, and in that case the proceedings go on from the point at which they were left off.

Whatever casualties may occur among the members, so long as the legal number remains, the trial is proceeded with without reference to the convening authority.

But a C.M. must always *commence* its sittings with the number specified by the convening officer.

The absence of any member, by sickness or otherwise, during any part of the trial necessarily prevents his resuming his seat.

No new member can be appointed after the court has been sworn in, even an officer who has been detailed in orders as "in waiting," if not required at the time of the court being sworn in, cannot at any subsequent stage of the proceedings, replace any member. Therefore, if a court, after being sworn in, be reduced by death below the legal number, it is necessarily dissolved.

If, during the trial, a new President or a new member be appointed, the trial must begin afresh.

A court may also be dissolved by the convening authority, if the illness of any member be so serious as to render necessary such an adjournment as would prove inconvenient to the service.

In either case, provided the court had not proceeded so far as to give judgment, another court may be assembled for the trial of the prisoner, the proceedings being commenced *de novo*.

It would generally be sufficient, *if the prisoner raised no objection*, that the evidence formerly given be read over to the witnesses re-sworn, and that the latter be allowed to correct their evidence and be cross-examined; but each witness must be asked if that be his evidence, and if he has any additions or corrections to make. But the court and each witness have to be re-sworn.

The illness of the prisoner, if it promise to suspend the proceedings of the court to the serious prejudice of the service, may also justify its being dissolved; the prisoner remaining liable to future trial.

Should the death of a prisoner put a stop to the trial, the fact must be established by evidence and recorded on the proceedings before the court is finally adjourned. Sometimes in his defence a prisoner makes remarks reflecting on the regiment or on the conduct, &c., of others. The court must not allow those statements to be refuted by the prosecutor. If they are unsupported by evidence, where they affect discipline generally and the credit of the corps, the confirming authority usually gives the assailed party the opportunity of refuting them for his satisfaction, but not in court.

It is important that every trial by C.M., when once begun, should, as far as possible, proceed with regularity and without interruption to its conclusion. The court have the power of granting an adjournment which may become necessary on account of illness, &c., but they should in no case permit an adjournment for the purpose of obtaining further evidence, either on behalf of the prosecution or the prisoner, unless they are satisfied that such an adjournment and evidence are not unjust to the prisoner, and are necessary to assist the course of justice. Great care should, therefore, be taken, both by the prosecutor and prisoner, to have ready at the trial all the witnesses and documents they may desire to produce in support of their respective cases.

THE PROCEEDINGS.

All essential features relating to the conduct of the proceedings of a C.M. are laid down in the Act, and these must be strictly observed to render the trial legal. These provisions are supplemented by regulations as to details, and afford a guide for almost every contingency that may occur. The non-observance of the first invalidates the trial; the same, in the case of the latter, would not necessarily do so unless the ordinary principles of justice are departed from. Irregularities and departure from regulations are often animadverted on by the confirming authority, sometimes in the proceedings, sometimes by a separate minute to the members.

Trials are to be held between 8 a.m. and 4 p.m., except in India, where trials may commence at 6 a.m. If the Court consider it necessary, they may continue any trial beyond 4 p.m., recording in the proceedings their reason for so doing. In cases requiring an immediate example, or when the General or other officer commanding any body of troops shall certify under his hand that the same is expedient for the public service, trials may be held at any hour.

The whole of the proceedings are to be accurately recorded in a clear, legible hand, without erasures. In the case of the Superior Courts a printed form is filled

up; in the case of R.C.M. the proceedings are written on foolscap paper, a margin being always left. To ensure the legality of the proceedings, a form is appended to the Act which is to be accurately followed. This is given in the appendix.

When corrections or interlineations are unavoidably made, they are to be verified by the President's initials. The pages are to be numbered, and the sheets fastened together. Sufficient space—at least half a page—must be left immediately below the President's signature for the remarks and signature of the confirming officer. The station and date are to be added in all cases.

At Field G. C. M. the President has not to record the proceedings or evidence, but he has only to fill in two columns of a schedule supplied by the Provost Marshal, *i.e.*, the plea, finding and sentence, which he signs as well as a certificate giving date of assembly of court and verifying the entries in the schedule. These schedules contain 4 columns. 1. Name of offender; 2. Offence charged; 3. Plea; 4. Finding, and, if convicted, how dealt with by the confirming officer.

The officers appointed to serve on the court having assembled according to order, the President, who must in all cases be a combatant officer, takes his seat at the head of the table, and the J.A. (or President) calls over the names of the members, who take their seats according to rank alternately to the right and left, and may not leave them without permission of the President. The court is then proclaimed open, and the prisoner, prosecutor and witnesses appear in court.

The hour at which the court opens is always recorded, and every adjournment must be precisely noted in the minutes; also the time at which the court re-assembles, and alterations, if any, in its composition.

The presence of the prisoner is entered, as all proceedings in open court must take place before him.

As there is only one legal manner in which any court can assemble, the order for convening the court, by whom, and the date of the order are then read, also the warrants appointing the President and J.A. The names of the President and members are then read over, and they severally answer to their names, so that the prisoner may identify them, and the following question is put by the President to the prisoner:—"Do you object to be tried by me as President or by any of the officers whose names you have heard read over?"

A prisoner cannot challenge (*i.e.*, object to) the court generally, nor the whole of the members collectively, but he has the privilege of objecting to all or to any one of the officers composing the court individually, and each objection is entertained separately. The member who is challenged generally leaves the room, and his challenge is decided by the votes of all the rest. When the case of the first member challenged has been disposed of, ther that of the second member challenged is considered in the same way. Although members may be challenged, they have to vote for deciding whether another member's challenge is void or not. Peremptory challenges—that is, challenges without reasonable cause assigned—are not allowed by C.M., but for every challenge a cause must be shown. This differs from the civil practice, where, in trials for felony before Criminal Courts, the prisoner has a right of peremptory challenge of twenty jurors without showing cause, and then he may challenge others with showing cause.

In the case of challenges, the court must decide on the *assertion* of the prisoner challenging, of the officer challenged, and of the witnesses adduced, since it cannot receive evidence on oath before being itself sworn in—the court being cleared for deliberation.

The following are some valid causes of challenge against officers of the court:—

1. Having declared an opinion unfavorable to the prisoner maliciously, or having expressed an opinion respecting the prisoner in connection with the charge in question.

2. Being an interested or an injured party. What constitutes an interest? The proceedings of a court for the trial of a private for stealing a case of wine from the officers' mess was quashed by the J. A. G. in London, although the prisoner himself raised no objection, on the ground that some members of the court belonged to the prisoner's regiment, and were therefore interested parties. So again, a drum-case

was stolen by a private, which was considered to belong to the regiment, and the proceedings were quashed because an officer of the regiment sat on the trial.

3. Having been a member of a Court of Inquiry to investigate the charge whether an opinion was given or not.

4. Being a material witness on the trial.

The C. O. of a corps to which the prisoner belongs, or the officer who investigated 50
the charges, may not sit on the C. M. except on Field G. C. M.—nor act as J. A's.

Should the prisoner object to the President, the objection is only valid if allowed by at least one-third of the members, in which case the court adjourns for the appointment of another President; but should he object to any officer other than the President, the objection is decided by a majority of votes. If the challenge is allowed the member retires, and if his retirement reduces the number of officers below that named in the order convening the court, the President may appoint any officer nominated for the purpose as "in waiting" by the convening authority to take his place, and if no such officers have been nominated the court must be adjourned for the convening authority to nominate another officer.

The J. A. cannot on any grounds be challenged.

The prisoner may also object to the composition of the court for defect in rank or otherwise. Such a matter should, of course, be discovered by the court itself; if not, it would be better for the prisoner not to challenge, but to allow the trial to proceed and get it quashed afterwards.

After all challenges have been disposed of, the J. A. administers the oaths, first to the President by himself, as a mark of respect, and afterwards to the members collectively. The oath of secrecy is then administerd by the President to the J. A. On trials by minor courts the oaths are administered by the President to the other members, and afterwards by any sworn member to the President.

The President and members are sworn to administer justice fairly according to the evidence, and not to divulge the sentence until duly confirmed, nor to divulge the vote or opinion of any particular member of the C. M. unless required to do so in due course of law. No oath is necessary in cases where by law a solemn affirmation may be made.

The charge is then read in open court to the prisoner. The witnesses are directed to withdraw, when the President, or J. A., at his desire, proceeds to arraign the prisoner by addressing him by his rank and name and to the following effect:—

"Are you guilty or not guilty of the charge (or charges) against you, which you have heard read?"

When two or more prisoners are tried together, each is separately arraigned in like form. The prisoner pleads either "guilty" or "not guilty," or he stands mute, or refuses to plead, or answers foreign to the purpose, or pleads "in bar of trial."

A plea of "guilty" is in law a conclusive admission by the prisoner of his guilt, and further evidence is not required for the purpose of proving the charge, and in a C. M. the plea of guilty is considered equally conclusive, but in every case where a prisoner pleads guilty, a C. M. is, nevertheless, enjoined to investigate the charge, so that all the circumstances connected therewith may be known to the confirming authority and to the court to enable them to become acquainted with the facts and give sentence accordingly.

Before recording a plea of "guilty," the court will satisfy themselves that the prisoner fully understands all the advantages he forfeits by the plea.

A prisoner pleading guilty is not debarred from producing evidence as to the fact as well as character of the offence, nor from addressing the court on his defence in extenuation of the offence or in mitigation of punishment, nor from cross-examining the witnesses for the prosecution.

If a prisoner stands mute, refuses to plead or answers foreign to the purpose, a plea of "not guilty" is recorded on his behalf.

Pleas in "bar of trial" may be either to the jurisdiction of the court or "special pleas in bar," as they are termed.

A prisoner pleading to the jurisdiction, may aver that he is no soldier or not amenable to a C. M., or that the court is not legally constituted, or that the offence was committed more than three years before the warrrant for trial, &c.

A prisoner urging a "special plea in bar" may allege a former acquittal or conviction, or previous punishment for the offence, or a pardon, or that the offence is condoned by his having been intentionally released from confinement and placed on duty, or want of specification in the charge, &c.

If the plea in bar of trial appears to be plausible, evidence on oath, when necessary, is heard to the point; and, if on deliberation, the plea be allowed, the fact is recorded, the court adjourns and the circumstance is reported to the convening officer, but if the plea in bar of trial be disallowed by the court, the prisoner is then required to plead to the charge.

A plea of guilty or not guilty having been recorded, the prosecution is commenced.

During the taking of evidence any member may put a question to a witness or to the J. A., but such questions have to be put to the President, as the court has to decide whether there is any objection to put any particular question, and if objected to it is not put; if it is allowed it is put as a "question by a member," name not given.

A member who, in the finding, has voted for acquitting the prisoner, must, nevertheless, vote for the sentence if the court has found the prisoner guilty.

ADDRESSES.

At a C. M. addresses are seldom necessary, but when offered they are to be handed in in writing to the court, read, and attached to the proceedings.

The following are the rules as to addresses to the court from the prosecutor and prisoner:—

The prosecutor is in every case allowed an opening address. He may, however, proceed to call witnesses for the prosecution at once, but in all important or difficult cases, it is usual for him to open the case by a statement of the facts he proposes to prove, and the nature of the evidence by which he intends to establish the different points of the case.

At the close of the prosecution, the J. A. (or President) asks the prisoner if he intends to adduce evidence in his defence. If he does not desire to call any witnesses, the prosecutor is allowed a second address for the purpose of summing up the evidence for the prosecution and explaining anything which requires to be made clear. This concludes the prosecution which may not be renewed. The prisoner is then allowed to address the court in his defence; after which the J. A. sums up the whole case in open court. After the J. A. has spoken, no other address is allowed, and the court will retire to consider the finding.

When, in reply to the question put to him, the prisoner states he intends to adduce evidence, he may open his case with an address, then call his witnesses, and at the conclusion of the evidence in his defence he can make a second address, to which the prosecutor may reply. The court, may, if necessary, adjourn to enable the prosecutor to prepare his reply.

In those special cases where the prosecutor is allowed to bring fresh evidence in reply, the prisoner's second address follows immediately after such evidence and immediately before the prosecutor's reply, to be followed by the J. A. summing up. But this is only allowed under special circumstances, as when the prisoner's witnesses have raised new matter which the prosecutor could not have foreseen or thought of, and then he may be allowed to call witnesses to refute this new matter.

If any question arises during the trial as to the admissibility of a question or of evidence, the person requiring the opinion of the court is to speak first, the other party then answers, and the first person is allowed to reply.

The addresses of the prisoner should be confined to the matter before the court; his opening address to the points on which his defence is grounded; the second to a brief summary of the importance of evidence adduced. It is clear that making violent attacks on the prosecutor, or assigning to him or any other person, improper motives, would be no defence. The value of any opening address depends on its being corroborated by evidence on oath; otherwise, treated as a mere statement, it is of no value.

Examination of Witnesses.—Evidence is to be given on oath or solemn affirmation, before all C. M. The witnesses for the prosecution are examined first by the prosecutor. The prisoner is always to have an opportunity of cross-examining every witness, after which re-examination by the prosecutor is allowed. If the prisoner declines cross-examining the witness, it is stated in the proceedings. 52

The court may ask questions of any witness (through the President) at any time, though it is advisable to refrain till the examination of the witness by the prosecutor and prisoner is concluded.

Defence.—The prisoner being called upon to make his defence, may have nothing to urge, or may make a simple statement, or may have prepared a regular address to be corroborated by witnesses.

In the first two cases the facts would be recorded on the proceedings and the court would at once call on the J. A. to sum up. The last case has already been considered.

The summing up of the J. A. is to be handed in in writing, read to the court and attached to the proceedings.

The court is then cleared to deliberate upon the finding.

Finding.—The finding is the opinion of the court relative to the prisoner's guilt or innocence with regard to each (or all) of the charges preferred against him. The court deliberates on the evidence with closed doors. It is still in the power of the court to re-call a witness to put to him any particular question—not to re-open the evidence, but to gain some particular information—the prisoner and prosecutor must necessarily be present and may cross-examine such witnesses on the points touched upon.

Every member who has been sworn, and attended the proceedings, is required to give his vote on each charge separately; the junior member voting first, the President last.

It is not necessary to find a verdict of guilt or acquittal upon the whole of each charge or instance. The finding may be special, that is the finding may be guilty of part of any charge, the exception being stated. It may state specially which of the facts, as charged, the court finds to be proved; or it may amend slight errors in the charge not material to the merits of the case; for instance, a prisoner charged with having committed an offence on a certain date and at a certain place, may be convicted of having committed the offence, but on some other date or at some other place. A prisoner charged with stealing a certain sum of money may be convicted of stealing another sum; or the prisoner may be convicted of a minor offence, if included in the greater offence of the same kind; thus, a soldier charged with desertion may be convicted of attempting to desert or of absence without leave. But if the part of the charge which is not proved constitute the essence of the offence, the court must acquit altogether. For instance, if a soldier be charged with having *wilfully* maimed himself, and if the evidence prove that he maimed himself but not wilfully, the court must acquit altogether, as the word "wilfully" constitutes the essence of the offence.

A prisoner charged with attempting to desert may be found guilty of desertion or of absence without leave. A prisoner charged with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property—so also if charged with embezzlement he may be found guilty of stealing, or of fraudulently misapplying money or property.

In all cases when the court acquit the prisoner, the finding is to be recorded in simple terms, "Not guilty," except when the acquittal is on the ground of insanity, when it would be worded as follows:—

"The court find that the prisoner was of unsound mind at the time he committed the offence and do therefore acquit him of the same." 126

If, on the trial of a Commissioned Officer, the court desire to acquit the prisoner honorably, they are to state so in a separate letter.

If the finding of "Not Guilty" is on all the charges, the finding must be pronounced in open court, and the prisoner released.

If a soldier is found guilty of either the whole or any part of the charge or charges preferred against him, for the guidance of the court in awarding punish- 156, 157,

158 ment, as well as for that of the convening officer, the court re-opens to inquire into and record the prisoner's former convictions, whether by Military Court or Civil Court, the former of which may be proved by the entry thereof in the Regimental C.M. Book, or Defaulter's Book or by a certified copy of such entry, and the latter by the certificate obtained from such court, or by certified copy thereof, or by the entry of the conviction in the C.M. Book or Defaulter's Book, or by certified copy of such entry, which entry shall only be made upon such certificate.

When a soldier is found guilty of drunkenness, the court receives evidence of all his former entries of drunkenness in any Defaulter's Book to assist the court in determining the punishment.

After this the court receives evidence as to any sentence the prisoner may then be undergoing, also his age, date of attestation, service allowed to reckon towards limited engagement, his general character and any medals, good conduct badges or other honorary rewards in possession; also, as to the length of time the prisoner has been in confinement before his trial.

This evidence is to be given, when possible, by a commissioned officer who is not a member of the court; generally by the prosecutor, who is first sworn.

On the trial of an officer only evidence of former convictions (if any) is produced at this stage of the proceedings.

Sentence.—The prisoner's previous convictions, &c., having been inquired into, the court is again cleared for the purpose of deciding upon the sentence secretly, and the votes of all members are taken in the same manner as for the finding.

It is often convenient, if the court differ as to the punishment, first to decide as to its nature, and then as to its extent.

In all cases there must be an absolute majority of the whole court. It is not sufficient that a greater number of votes should be given for any one kind of punishment than for any other punishment, unless that greater number should form a majority of the whole. It is illegal to determine the amount of punishment by dividing the aggregate amount awarded by all the members collectively, by the number of members constituting the court, for the opinion of the majority may often be overruled thereby.

C.M. before passing sentence, are to ascertain that the state of health of the prisoner will admit of the sentence being forthwith carried into effect. If the medical certificate states that the prisoner is unable to undergo hard labour, the court may nevertheless award "impt. with such hard labour as, in the opinion of the medical officer of the prison, the prisoner may be equal to."

Sentences of impt. are always to be specified in days.

Just discrimination is to be used by the court in applying the quantum of punishment to the nature and degree of the offence, so that the award may be final and carried into effect; as it is indisputable that crimes are more effectually prevented by the certainty than by the severity of punishment.

53 If the court wish to recommend the prisoner to mercy, or to remark on the conduct of the parties before them, or on the manner in which a particular witness has delivered his testimony, they should embody their views in a separate letter, to be signed by the President and forwarded with the proceedings.

The proceedings of a G. C. M., if held in the U. K., are transmitted by the Deputy J. A. to the J. A. G. for the decision of the Sovereign; and in the case of the Royal Marines, to the Secretary of the Admiralty for the decision of the Admiralty; if held abroad, to the General in Command, or other officer vested with authority to confirm the proceedings.

The proceedings of a D. C. M. are forwarded by the President to the General Officer commanding the district, or to army headquarters, where there is no General Officer in command, for confirmation.

The proceedings of a R. C. M. are forwarded to the C. O. of the regiment.

With regard to Field G. C. M. the Provost Marshal is responsible that a proper record of the proceedings is kept. He may be the Prosecutor, but he must nevertheless see that the prisoner has a fair trial, for which he must summon all necessary witnesses, &c. He takes charge of the Proceedings to get them confirmed, and then transmits them when promulgated to the Staff Officer of the force to which he is attached.

For trial by a Field G. C. M., the complaint against the prisoner must be made by a Provost Marshal or by one of his assistants.

When a C. M. has been confirmed it is sent to the C. O. of the regiment who causes the charges, finding, sentence, also the remarks and confirmation of the confirming authority to be promulgated to the prisoner on parade. If the court recommended the prisoner to mercy, such recommendation is also to be promulgated and communicated to the prisoner. 53

CONFIRMATION OF COURTS MARTIAL.

The finding and sentence of a C. M. are not valid unless confirmed by the proper authority, except in the case of the finding of acquittal, whether on all or some of the charges, which finding does not require confirmation, nor is it subject to revision, and if it relates to the whole of the offences it is pronounced at once in open court, and the prisoner is discharged. 54

The duty of the confirming authority is one of the first importance, as on him devolves the whole responsibility of giving effect to the proceedings. He is required to be totally independent of the court.

The object of interposing the confirming authority before the execution of any sentence awarded by C. M. is, undoubtedly, with a view to a thorough investigation of the whole circumstances, and that justice may be mercifully administered. The officer entrusted with this duty is not restricted from making any enquiries necessary on questions raised on the trial, and he may act on them in confirming or remitting the sentence.

The following authorities have power to confirm the findings and sentences of C. M.:—

In the case of a :—

(*a*). R. C. M., the convening officer, or officer having authority to convene such a C. M., at the date of submission of the finding and sentence, that is, generally the C. O. of the regiment. 54

(*b.*) D. C. M., an officer authorised to confirm a G. C. M., or some officer deriving authority to confirm a D. C. M. from an officer authorised to confirm a G. C. M., generally in England the officer commanding a district.

(*c.*) G. C. M., in the U. K., Her Majesty or the C. in C.—abroad, an officer having authority under warrant from Her Majesty.

(*d.*) Field G. C. M., an officer authorised to confirm G. C. M. for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part. If the sentence is not capital any general officer or F. O. authorised to confirm G. C. M. to whom the proceedings are brought by the Provost Marshal; if capital, then by the General or F. O. commanding the force. 49, 54, 72

No member of a C. M. can confirm its finding and sentence. Where a member of a C. M. becomes confirming officer, he must refer the matter to a superior officer competent to confirm the like description of C. M., who will then be the confirming authority.

An officer having authority to confirm a C. M. may withhold his confirmation and refer the matter to any competent superior authority, who will then be the confirming authority. In a colony where there is no such superior authority, the Governor of the colony may be the confirming authority.

A sentence of death passed in a colony, unless passed for an offence committed on active service, must, in addition to the ordinary confirmation, be approved by the Governor of the colony; and in India by the Governor of a Presidency, if within the limits of any Presidency; otherwise by the Governor General.

If the punishment awarded is in excess of that authorised by law, the confirming authority may vary the sentence so as to make it legal, and confirm the sentence as so varied.

Where a person is convicted of manslaughter or rape, or any other civil offence by C. M., and is sentenced to P. S., such sentence, in addition to the usual confirmation, must be approved by the Governors above mentioned.

The proceedings of C. M., whether original or revised, may be "confirmed" either wholly or in part, or "not confirmed." If the confirming authority withholds his confirmation the sentence is annulled, and the prisoner returns to his duty, and he cannot be tried again, though conviction remains if the finding was guilty, and there is no remission of any penalty consequent on his conviction, such as forfeiture of service towards pension, good conduct pay, &c.

When the proceedings are quashed, or set aside, on account of their illegality, or form, or any other circumstance, which is an action taken after confirmation, in the case of a D. C. M. by the J. A. G., in that of a R. C. M. by authority of the General, the soldier is to be relieved from all consequences of his trial and all record of it is erased. The confirming authority cannot quash the proceedings.

If the confirming officer disapproves of either the finding or sentence, he may order the court to re-assemble for the purpose of revision, the part to be revised and the necessity of revision being stated to the court in a separate minute.

Revision can only be ordered once. The same members who formed the court originally must reassemble. No additional evidence respecting the charge can be taken, and no portion of the original proceedings can be altered. No sentence can be increased on revision, and if any alteration is made in the finding, the sentence must be given afresh, and the opinion of the court stated in addition. The minute of the confirming officer, or a copy thereof, containing the instructions to the court and the reasons for requiring the revision is also attached to the proceedings.

The court may either revoke their former finding or sentence, or both (as required), or adhere to their former opinion. In the latter case the proceedings must be confirmed, though not necessarily with approval; and the confirming officer may still, if he think fit, transmit the proceedings to higher authority.

56 The confirming authority has power to mitigate or remit the punishment awarded, or commute it for any less punishment or punishments to which the offender has been sentenced by the court. He may also for a time suspend the execution of a sentence, but he cannot remit any penalty consequent on conviction.

The confirming authority has power to commute a sentence of death to P.S. or to impt. with or without hard labour, or a sentence of P. S. to impt., with or without hard labour. On active service a sentence of death, or P.S. for a crime for which death might have been inflicted, may be commuted to corporal punishment, and a sentence of corporal punishment to impt. with or without hard labour, not exceeding 42 days.

If the sentence of death on an officer or N. C. O. is commuted to P. S. or impt., the commuted sentence must first provide that the officer be cashiered, and the N. C. O. reduced to the ranks.

Impt. with hard labour may be mitigated to simple impt.; cashiering to dismissal; public reprimand to private reprimand, etc.

Her Majesty alone can pardon any prisoner convicted by C.M. when the proceedings have been confirmed.

56 When a sentence passed by a C.M. has been confirmed, the following authorities have power to mitigate or remit the punishment awarded, or commute such punishment for any less punishment to which the offender might have been sentenced:

1. As respects persons undergoing sentence in any place whatever: Her Majesty or the C. in C. or the officer commanding the district or station where the prisoner may for the time be.

2. In India by the C. in C. of the forces in India, or in any Presidency by the C. in C. of the forces in that Presidency.

3. In a colony by the officer commanding the forces in that colony.

4. In any place not in the U.K., India, or a colony, by the officer commanding the forces in such place.

Provided that every officer exercising this authority holds a command superior to the confirming authority.

Execution of Sentence: The authority confirming a sentence of death fixes the time and place. The court specifies whether the sentence is to be carried out by shooting or

hanging. On a sentence of P.S. being confirmed, a judge's order must be obtained before sending the prisoner to a convict prison.

In cases of impt., if a man is to be discharged he is sent to a civil prison; in all other cases, to a military prison.

The place of impt. under sentence of a G.C.M. is to be appointed by the officer commanding the station; and under the sentence of any other C.M., by the officer confirming the proceedings; or if not by him, then by the C.O. of the prisoner's regiment or corps.

Corporal punishment must always be inflicted in the presence of a commissioned officer, and, whenever practicable in presence of a medical officer. The latter, or in his absence the former, may order the punishment to cease at any time time, which shall then be deemed to have been fully inflicted.

DISPOSAL OF PROCEEDINGS.

The proceedings having been confirmed, an extract therefrom in the case of a G. C. M., and the original proceedings in the case of a D. C. M., are forwarded for promulgation on parade to the prisoner's C. O., who then returns them to the convening officer. In the case of a D. C. M. the convening officer returns them to the President by whom they are forwarded under cover to the J. A. G.

In the case of Royal Marines; he sends them direct to the Secretary of the Admiralty.

The proceedings of General or D. C. M. and Field G. C. M. after being confirmed and promulgated are kept deposited in the office of the J. A. G. in London, or at the Admiralty; those for G. C. M. are kept for not less than seven years; those for D. C. M. and Field G. C. M. for not less than three years. 121

The proceedings of R. C. M. are to be kept by corps for not less than three years. 72

Any person tried by G. C. M., or any person on his behalf, can within seven years, and in the case of any other C. M., within three years after confirmation of the finding and sentence, obtain a copy of the whole proceedings, paying for the same at the rate of two pence per folio of 72 words. 121

CHAPTER VI.

CRIMES AND PUNISHMENTS.

The principle of classification adopted in the Act classifying the different military offences is that of grouping together offences of a similar character, and ranging the various groups as between themselves in a manner intended to impress the soldier with their relative importance. For example, the Act begins with the punishment of "offences in respect of military service," on the ground that misbehaviour in the field is the greatest crime that a soldier can commit. This is followed by "mutiny and insubordination" by way of showing that after misbehaviour in the field, mutiny and insubordination rank next in order amongst a soldier's crimes. The offences here enumerated refer only to "every person subject to Military Law," an expression used throughout the Act for the purpose of including persons other than officers and soldiers, such as camp followers, sutlers, etc., who are subject to Military Law.

The punishments specified for each offence are *maximum* punishments, and the offender when convicted by C. M. of the offence is only *liable* to suffer such *maximum* punishment, "or such less punishment as is in this Act mentioned."

A maximum punishment is only intended to be imposed when the offence committed is the worst of its class, and is committed by an habitual offender, or is committed under circumstances which require an example to be made by reason of the unusual prevalence of that offence in the force to which the offender belongs.

The following are the principal offences enumerated in the Act.

OFFENCES IN RELATION TO THE ENEMY PUNISHABLE WITH DEATH.

4 Shamefully abandons or delivers up a post or induces others to do so,—casts away arms, etc, in presence of an enemy,—assists the enemy in any way,—misbehaves or induces others to misbehave before the enemy so as to show cowardice,—knowingly does anything calculated to imperil the success of H. M. forces,—*treacherously* holds correspondence with or gives intelligence to the enemy &c.

Punishment—Death.

OFFENCES IN RELATION TO THE ENEMY NOT PUNISHABLE WITH DEATH.

5 Leaves the ranks without orders to secure prisoners horses, to take wounded to the rear,—wilfully destroys property without orders,—is taken prisoner by want of due precaution, disobedience of orders, &c., and fails to rejoin the service when able to do so;—without authority holds correspondence with or gives intelligence to the enemy (doing this without treachery is not so serious a crime);—spreads reports, or in action or previous to going into action, uses words calculated to create unnecessary alarm or despondency.

Punishment—P. S.

OFFENCES PUNISHABLE MORE SEVERELY ON ACTIVE SERVICE THAN AT OTHER TIMES.

6 Leaves his C. O. to go in search of plunder, leaves guard, post, &c., without orders;—forces a safeguard or a sentry;—impedes the Provost Marshal or his assistants or refuses to assist them in the execution of their duty;—does violence to the person or property of any inhabitant;—breaks into any house in search of plunder;—*intentionally* occasions false alarms, *treacherously* makes known the parole or watchword, or gives a wrong one, [if the latter two offences are not done intentionally or treacherously they are only punishable by cashiering or impt.,]—appropriates to his own corps any

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supplies proceeding to the forces contrary to orders;—a sentinel who sleeps or is drunk on his post,—leaves his post before being regularly relieved.

Punishment—on active service, death; not on active service, cashiering or impt.*

MUTINY AND SEDITION.

Causes, conspires with other persons to cause, endeavours to seduce others, joins in, or does not endeavour to suppress, or conceals knowledge of a mutiny or sedition in any forces. 7

Punishment—death.

STRIKING OR THREATENING A SUPERIOR OFFICER.

Strikes or uses or offers any violence to his superior officer *in the execution of his office.* 8

Punishment—death.

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer.

Punishment—on active service—P. S.; not on active service, cashiering or impt.

DISOBEDIENCE TO SUPERIOR OFFICER.

Disobeys so as to show a *wilful* defiance of authority any *lawful* command given *personally* by his superior officer *in the execution of his office.* 9

Punishment—death.

Disobeys any *lawful* command given by his superior officer.

Punishment—on active service—P. S.; not on active service—cashiering or impt.

INSUBORDINATION.

Being concerned in any fray refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes, uses or offers violence to such officer,—or to any person in whose custody he is placed,—resists an escort sent to apprehend him,—being a soldier breaks out of barracks, camp or quarters. 10

Punishment—cashiering or impt.

NEGLECT TO OBEY GARRISON OR OTHER ORDERS.

Punishment—cashiering or impt. 11

DESERTION.

Deserts or attempts to desert, persuades, &c., others to desert. 12

Punishment—on active service, or under orders for active service—death; under any other circumstances, for first offence—impt.; for subsequent offences—P. S.

FRAUDULENT ENLISTMENT.

When belonging to regular forces, reserve forces or militia, enlists in any of the above forces or enters the Royal Navy. 13

Punishment—for first offence—impt.; subsequent offence—P. S.

In addition to these prescribed punishments, the court may, of course, also sentence the offender to make good any expenses, loss, damage or destruction occasioned by the commission of the offence, and, therefore, to make good the value of a free kit, if it is shown by evidence that one was received,

* *i.e.* Cashiering if an officer; impt. if a soldier.

PERSUASION OF OR CONNIVANCE AT DESERTION.

14 Assists others to desert, or being aware of any desertion or intended desertion, does not inform his C. O., or endeavour to have the deserter apprehended.
Punishment—impt.

ABSENCE FROM DUTY WITHOUT LEAVE.

15 Absent without leave,—fails to appear at place appointed by his C. O. or leaves it without being relieved,—being a soldier, is found beyond any limits fixed or in any place prohibited by any order, without a pass or written leave of his C. O.
Punishment—cashiering or impt.

SCANDALOUS CONDUCT OF AN OFFICER.

16 Behaves in a scandalous manner, unbecoming the character of an officer and a gentleman.
Punishment—cashiering.

STEALING AND EMBEZZLEMENT.

17 Being charged with or concerned in the care or distribution of any public money or goods, steals, fraudulently misapplies or embezzles the same, or connives thereat, or wilfully damages such goods.
Punishment—P. S.

DISGRACEFUL CONDUCT OF SOLDIER.

18 Malingers or feigns or produces disease or infirmity,—wilfully maims or injures himself or other soldier, with intent to render himself or other soldier unfit for service;—wilfully produces or aggravates disease in any way;—steals or embezzles, or receives, knowing them to be stolen or embezzled, any money or goods;—is guilty of any other offence of a fraudulent nature not specified in the Act, or of any other disgraceful conduct of a cruel, indecent or unnatural kind (words "disgraceful conduct" are only to be used for offences under this last para.).
Punishment—impt.

DRUNKENNESS.

19 Drunk, whether on duty or not on duty.
Punishment—an officer—cashiering; a soldier—impt., and in addition to or in substitution for any other punishment, to pay a fine not exceeding one pound.

PERMITTING ESCAPE OF PRISONER.

20 Releases without authority, when in command of a picket, guard, patrol or post, any prisoner committed to his charge, or allows his escape.
Punishment—if he has acted *wilfully*—P. S.; if he has acted *negligently*—impt.

IRREGULAR IMPRISONMENT.

21 Unnecessarily detains a prisoner in custody without bringing him to trial, or fails to bring his case before proper authority for investigation, or when in command of a guard, does not, within 24 hours, give in writing a report of prisoner's name and crime, and the name and rank of person by whom he was charged.
Punishment—cashiering or impt.

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ESCAPE FROM CONFINEMENT.

Escapes or attempts to escape from lawful custody. 22
Punishment—cashiering or impt.

CORRUPT DEALINGS IN RESPECT OF SUPPLIES TO FORCES.

Being in command of any garrison, fort or barrack, connives at the exaction of exorbitant prices for houses or stalls let to sutlers;—or lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in the sale of provisions or merchandise brought into places under his command. 23
Punishment—impt.

DEFICIENCY IN AND INJURY TO EQUIPMENT.

Pawns, sells, loses by neglect, makes away with or wilfully spoils (or defaces) his arms, ammunition, equipment, instruments, clothing, regimental necessaries or military decoration;—illtreats or unlawfully sells or makes away with any horse of which he is in charge. 24
Punishment—impt.

FALSIFYING OFFICIAL DOCUMENTS AND FALSE DECLARATIONS.

In any report, return, pay-list, book, route or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes or is privy to making any false or fraudulent statement, or any omission with intent to defraud,—or knowingly and with intent to defraud, or to injure any person, suppresses, or makes away with any documents which it is his duty to preserve, or where it is his official duty to make a declaration respecting any matter, knowingly makes a false statement. 25
Punishment—impt.

NEGLECT TO REPORT AND SIGNING IN BLANK.

When signing any document relating to pay, arms, ammunition, &c., or any stores, leaves in blank any material part for which his signature is a voucher, or refuses, or by culpable neglect omits to make or send a report or return which it is his duty to make or send. 26
Punishment—cashiering or impt.

FALSE ACCUSATION OR FALSE STATEMENT BY SOLDIER.

Being an officer or soldier, knowingly makes a false accusation against any other officer or soldier, or in making a complaint where he thinks himself wronged, makes any false statement affecting the character of an officer or soldier;—or knowingly and wilfully suppresses any material facts;—or, being a soldier, falsely states to his C.O. that he has been guilty of desertion, fraudulent enlistment, or of desertion from the navy, or has served in and been discharged from any portion of the regular, reserve or auxiliary forces, or the navy;—or makes a wilfully false statement respecting prolongation of furlough. 27
Punishment—impt.

OFFENCES IN RELATION TO COURTS MARTIAL.

Being duly summoned or ordered to attend as a witness before a C.M., makes default in attending;—or refuses to take any oath or make a solemn declaration legally required;—or to produce any document in his power legally required, or refuses to answer any question legally required;—is guilty of contempt of a C.M. by using insult 28

ing or threatening language, or by causing any interruption or disturbance in the proceedings of such court.

Punishment—Cashiering or impt.

(These offences cannot be tried by the court in relation to or before whom the offence was committed, except when any person, other than the prisoner, subject to Military Law, is guilty of contempt of court when that court may punish him with 21 days impt.)

PERJURY OR FALSE DECLARATION.

29 When examined on oath or solemn declaration before a C.M., or any court authorised to administer an oath, wilfully gives false evidence.

Punishment—impt.

OFFENCES IN RELATION TO BILLETING.

30 Is guilty of any ill-treatment, by violence, extortion, &c., of the occupier of a house in which any person or horse is billetted;—or an officer who refuses to cause compensation to be made for the same;—or fails to meet the just demands of the person on whom any person or horse is billetted;—or wilfully demands billets not actually required for those entitled to be billetted;—or takes, or knowingly suffers to be taken, from any person any money or reward to relieve him of his liability as to billetting;—or uses or offers any menace to, or compulsion on, a constable to make him give billets contrary to the Act, or to discourage him from doing his duty;—or uses or offers any menace or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billetted.

Punishment—Cashiering or impt.

OFFENCES IN RELATION TO THE IMPRESSMENT OF CARRIAGES AND THEIR ATTENDANTS.

31 Wilfully demands any carriages, animals or vessels, not actually required for purposes authorised in the Act;—or fails to comply with the Act as regards payment of sums due, and weighing of the load;—constrains any carriage, animal or vessel to travel against the will of the person in charge beyond the proper distance, or carry a greater weight;—or does not discharge, as speedily as practicable, any carriage, &c., impressed;—compels any person in charge, or permits him to be compelled, to take any baggage or stores not entitled to be carried, or any soldier, servant, woman or person (except such as are sick);—or ill-treats or permits ill-treatment of any person in charge;—or uses or offers violence to a constable, &c.;—or forces any carriage, animal or vessel from the owner.

Punishment—Cashiering or impt.

ENLISTMENT OF SOLDIER OR SAILOR DISCHARGED WITH IGNOMINY OR DISGRACE.

32 Having been discharged with ignominy, or as incorrigible and worthless from the regular or reserve forces, or auxiliary forces, when subject to Mititary Law; or having been dismissed with disgrace from the navy, has afterwards enlisted in the regular forces without declaring the circumstance of his discharge.

Punishment—P. S.

FALSE ANSWERS OR DECLARATIONS ON ENLISTMENT.

33 Having made a wilfully false statement to a justice or wilfully false answer to any question in the attestation paper.

Punishment—Impt.

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GENERAL OFFENCES IN RELATION TO ENLISTMENT.

Enlists for service in the regular forces, any man not authorised to be enlisted, or wilfully contravenes any provisions or regulations relating to enlistment or attestation. 34

Punishment—Impt.

TRAITOROUS WORDS.

Uses traitorous or disloyal words regarding the Sovereign. 35

Punishment—Cashiering or impt.

INJURIOUS DISCLOSURES.

Whether serving with any of H. M. forces or not, without due authority, either verbally or in writing discloses the numbers or position of any forces, or any magazine or stores, or any preparation for, or orders relating to, operations or movements, at such time and in such manner as, in the opinion of the court, to have produced effects injurious to H. M. service. 36

Punishment—Cashiering or impt.

ILL-TREATING A SOLDIER.

Strikes or otherwise ill-treats any soldier; or having received the pay of any officer or soldier, unlawfully detains or refuses to pay the same when due. 37

Punishment—Cashiering or impt.

DUELLING AND ATTEMPTING TO COMMIT SUICIDE.

Fights, or promotes or is concerned in or connives at fighting. Attempts to commit suicide. 38

Punishment—Cashiering or impt.

REFUSAL TO DELIVER TO CIVIL POWER OFFICERS AND SOLDIERS ACCUSED OF CIVIL OFFENCES.

On application being made to him, neglects or refuses to deliver over to the Civil Magistrate, or to assist in the apprehension of, any officer or soldier accused of an offence punishable by a Civil Court. 39

Punishment—Cashiering or impt.

CONDUCT TO PREJUDICE OF MILITARY DISCIPLINE.

Is guilty of any act, conduct, disorder or neglect, to the prejudice of good order and military discipline. 40

Punishment—Cashiering or impt.

No person can be charged under this section for any offence for which special provision is made in any other part of the Act.

OFFENCES PUNISHABLE BY ORDINARY LAW.

The Act gives absolute jurisdiction to a C. M. to try any civil offence, as a C. M. may try any offence of a felonious or fraudulent nature, or of any offence to the prejudice of good order and military discipline, which term embraces nearly all civil crimes; with the important exception, however, that a C. M. cannot try treason, murder, manslaughter, treason-felony, or rape, if committed in the U. K., and cannot try any of such crimes in any place within H. M. dominions other than Gibraltar, unless the offence was committed when on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the 41

offender can be tried for such offence by a competent Civil Court. If convicted by C. M. of any civil offence other than the above, he may receive the same punishment as in respect of an act to the prejudice of good order and military discipline, or any punishment assigned for such offence by the law of England.

REMARKS ON CERTAIN CRIMES AND PUNISHMENTS.

What constitutes a crime? *Will* and *intention* are the essential elements of every crime. No action is criminal in itself unless the intent involves a state of mind forbidden by law.

If a person kills another, he is not guilty of felony unless there was a specific intent to do harm or commit murder. Killing is not murder unless there be malice. Appropriation of another's property is no theft unless it is feloniously appropriating. The word "malice" is frequently used in legal phraseology, and means evil intent, and malice is deemed a necessary ingredient in one form or another of all crimes.

The law presumes every man to contemplate the natural and necessary consequence of his own acts until he shows justification or excuse.

"When the act is in itself unlawful, the proof of justification or excuse lies with the accused, in failure whereof the law implies criminal intent." This principle applies also to crimes of omission, as a woman neglecting her helpless child is guilty of murder by the Civil Law. In the army a large class of offences are crimes of omission.

Thus the law assumes malice and throws on the accused the onus of clearing himself, and it is for the latter to disprove malice by showing justification or excuse.

Treason is defined to be an offence against the security of the Queen and Her Dominions.

Felony and *Misdemeanour*.—There is no exact definition of felony, and it has been considered injudicious to make a distinction between felony and misdemeanour, yet the Statute distinctly calls certain crimes felonious, and lays down certain rules respecting felony.

Felony is defined by Sir W. Blackstone to be an "offence which occasions a total forfeiture of either lands or goods, or both, at Common Law, and to which capital or other punishment may be superadded according to the degree of guilt."

The principal felonies pronounced so by Statute are: Murder, manslaughter, attempt to murder, wounding with intent to do bodily harm, theft, burglary, housebreaking, rape, arson, forgery.

The term *misdemeanour*, in its legal acceptation, is confined to such indictable offences as do not amount to treason or felony.

Homicide may be either felonious, justifiable or excusable; in either of the two latter cases no penalty is incurred. Felonious homicide, again is divided into murder and manslaughter. Murder is the unlawful killing of a human being with malice aforethought, the malice being any felonious intent. Manslaughter is the unlawful killing of another without any malice, and may be either voluntary upon a sudden provocation, or involuntary when engaged in some unlawful act. Homicide is excusable when by accident while engaged in a lawful act. It is justifiable when imposed by law, or when a person having committed, or being charged with a felony, will not suffer himself to be arrested, in cases of riot, or to prevent any forcible or atrocious crime, &c. There must, in all these cases, be an apparent necessity for the homicide to render it justifiable.

Theft has been defined as "the wrongful or fraudulent taking and carrying away by one person of the mere personal goods of another with the *felonious intent*, to convey to the taker's own use and make them his own property, without the consent of the owner"

The taking must not only be wrongful but wilfully wrongful, for if the accused believed in his mind that he had a right to take the goods, and took them in good faith, it is not theft. To prove theft the intent must therefore be shown, and it must also be shown that the goods taken are the property of the owner specified. For this purpose property is said to belong to the person who is lawfully charged with it, as an officer in charge of any government property, postmaster, washerwoman, &c.

Theft is known to the ordinary criminal code as larceny, and there are two kinds: 1st, simple larceny; 2nd, compound larceny.

The latter is accompanied by circumstances of aggravation, such as stealing from a house, or from a person with violence.

Robbery is the felonious and forcible taking of any property from the person of another, or in his presence against his will. A person charged with robbery may be convicted only of an assault with intent to rob.

Burglary is a breaking and entering by night the dwelling house of another with intent to commit felony within the same, whether the felonious intent be executed or not. The night, in England, is considered to be from 9 p.m. to 6 a.m.

Arson is the wilful and malicious burning of a house, whether the house be the offender's or another's.

Forgery is the false making, altering or adding to, any writing or document with intent to defraud; it is not necessary to allege or prove an intention to defraud any particular person.

Perjury is defined to be "a wilful false oath by one who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter *material* to the point in question, whether he be believed or not."

A solemn declaration, when authorised, is equivalent to an oath.

One witness is sufficient to prove the taking of the oath, but two witnesses are necessary to prove the oath to be false.

Perjury is not a felony, but a misdemeanour. To bring this crime under the Act the oath must be authorised and required to be taken by the Act.

The court, therefore, must have jurisdiction in the cause in which the perjury is committed; otherwise the offender cannot be lawfully required to swear to the truth.

The swearing must be absolute. If a witness speaks to the best of his belief, and it is accepted, and it can be shown that he had knowledge to the contrary, he could still be indicted for perjury.

The statement must be wilful and not due to any mistake, surprise or inadvertency.

The matter must be material to the issue; this means that the statement must have a tendency directly or indirectly to influence the trial; immaterial statements are not triable for perjury.

Forcing a Safeguard.—A safeguard is a kind of protection to persons or property granted by the C. O. of troops to inhabitants, and guaranteed by the presence of one or more soldiers or officer specially allotted for that purpose. A safeguard is not in any way synonymous with sentinel, but the crime of forcing a safeguard is a contemptuous violation of the orders of the General, bringing his honour into disrepute. The idea is that the General having granted a safeguard for the protection of the lives and property of inhabitants, his honour is touched if it is forced by one of his own soldiers.

A sentry *sleeping on his post* or *leaving his post.*—To convict under this heading the evidence that the man was posted with sufficient ceremony must be complete and is essential. A soldier who has posted himself is not deemed posted.

Mutiny and Sedition.—Mutiny is an act committed more or less in conjunction with others; it implies extreme and collective insubordination, or rising against or resisting military authority in combination or simultaneously, with or without actual violence, such acts generally proceeding from alleged or pretended grievances of a military nature. A single individual can only be guilty of insubordination.

Sedition.—The difference between sedition and mutiny is not very clear, yet sedition is generally considered as treasonable or riotious acts committed by soldiers against the Government or civil authorities rather than against military superiors, though necessarily involving or resulting in insubordination to the latter.

Insubordination implies the striking, using or offering of violence to any superior officer in the execution of his office.

To constitute the offence of offering violence there must be an overt act, *i. e.*, a real attempt to use violence which would have taken effect but for some preventative

cause. A mere threat or gesture, such as shaking the fist, is not an offer of violence, unless close to the person threatened.

The term "*execution of his office*" applies more particularly to officers and N. C. O's being on duty at the time the offence was committed. N. C. O's, however, being continuously in uniform, it is laid down that they are, while with the regiment or any portion of it, always to be considered on duty. There has always been a doubt as to whether officers dressed in plain clothes could be considered as on duty. This is provided for in the Act by making the same crimes to a superior (not in the execution of his office) military offences, though not of so serious a nature. Could it be proved, however, that the officer in plain clothes was known to the offender he would in giving an order be deemed to be in the execution of his office.

Disobeying the lawful command of a superior officer.—No offences differ so much in degree as those falling under the general description of insubordination. An offence of that class may be of the most trivial character, or may amount to an offence of the most serious description, amounting, if two or more persons join in it, to absolute mutiny.

Under this heading there are two distinct offences specified. The essential ingredients of the graver offence are that it should show *a wilful defiance* of authority, and should be disobedience of a *lawful* command given *personally by a superior officer in the execution of his office.* Each of these particulars must be proved before the prisoner can be convicted of the graver offence of disobedience. The lesser offence consists of disobedience to any lawful command given by a superior officer, divested of the special conditions which mark out the greater offence.

Further, the order must be *lawful*, and this offers a wide field for discussion, as this implies that it would be lawful in a military sense to disobey the unlawful command of a superior. A great authority on Military Law (Simmons) comes to the following conclusion: "So long as the orders are not pointedly and decidedly contrary to the known laws of the land or custom of the service, or if in opposition to these laws that the acts ordered to be done do not tend to an irreparable result, they are lawful and the orders must be unhesitatingly obeyed."

Desertion and absence without leave.—Desertion is defined as "illegal absence from duty without intention of returning." Hence a soldier must not be charged with desertion unless the officer charging him is satisfied that he has gone away with the intention of leaving H. M. service. Further, even assuming he is charged with desertion, the court that tries him should not find him guilty of desertion unless they are fully satisfied upon the evidence that he has been guilty of desertion; in any case of doubt the court should find him guilty of absence without leave. In charging a man with desertion for any short absence without leave, it is necessary that there should be clear proof of his intention to stay away. On the other hand, absence without leave for any considerable time, if not satisfactorily accounted for, is in itself strong presumptive evidence of an intention to desert. A soldier may be tried for desertion from any regiment or corps into which he may have unlawfully enlisted, although he may by right belong to another corps and be a deserter therefrom, and any number of charges for desertion may form the subject of a single arraignment.

70 When a soldier has been absent without leave for 21 days a court of inquiry of three officers is to assemble, and having received proof on oath the court has to declare the absence and the period thereof and the deficiency, if any, in his kit, and the C. O. will enter a record of the declaration of the court in the regimental books. If the absent soldier does not afterwards surrender or is not apprehended, such record has the legal effect of a conviction by C. M. for desertion; and if such soldier should afterwards surrender or be apprehended such record, or a copy thereof purporting to be signed by the officer having custody of the books, is, in the trial of such soldier, to be admissible in evidence of the facts therein recorded.

71 Where a soldier signs a confession that he has been guilty of desertion, or of fraudulent enlistment, the C. in C., A. G., or officer commanding the forces in any colony, &c., may dispense with his trial and order him to suffer the same forfeitures and deductions of pay as if he had been convicted by C. M. for the offence. If upon such confession, evidence of the truth or falsehood of it cannot then be conveniently

obtained, the record of such confession, countersigned by the C. O., is entered in the regimental books, and the soldier continues to do duty in the corps in which he is serving or in any other corps to which he may be transferred, until his discharge or transfer to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

When a soldier re-joins from absence as a prisoner of war, a C. M. enquires into his case, and unless it is proved that he was taken prisoner from wilful neglect, or had not returned to the service as soon as possible, or had served with or aided the enemy, he may be recommended to receive arrears of pay, or a proportion thereof, and to reckon service during his absence.

Upon reasonable suspicion that a person is a deserter, a constable, or if no 147
constable can be immediately met with, then any officer or soldier, may apprehend him and bring him before a court of summary jurisdiction; and if satisfied by evidence or on oath that he is a deserter, such court may direct him to be delivered into military custody.

If confession of desertion is made when a man is not serving, he is to be brought before a court of summary jurisdiction, and if his statement appears to be true, he is remanded until reference can be made to the S. of S. for War. If false, he is to be summarily punished by impt. for a period not exceeding 3 months. Civilians who persuade soldiers to desert, or assist them in deserting, or conceal deserters, &c., may on summary conviction be imprisoned, with or without hard labour, for a period not exceeding 6 months.

With the crime of desertion, attempt to desert, or absence without leave, is frequently associated that of making away with clothing, equipment or necessaries.

Disgraceful Conduct is the heading under which are included in the Act offences by commissioned officers of a scandalous nature, unbecoming the character of an officer and a gentleman, and all offences by soldiers of a fraudulent nature not particularly specified in the Act, or of any other disgraceful conduct of a cruel, indecent or unnatural kind.

DRUNKENNESS.

Within the last fifty years several attempts have been made to repress this crime in the army. In 1830 was introduced the system of charging men before C. M. with the crime of habitual drunkenness, *i.e.*, a man must have been drunk four times within twelve months, or twice within the same period when on or for duty, or on the line of march.

This plan was continued till 1869, when C. O's were authorised to punish summarily by fine, simple acts of drunkenness; and trial by C. M. for habitual drunkenness was done away with.

The Act of 1879 again introduces the crime of habitual drunkenness, and defines an habitual drunkard as one who "has been guilty of drunkenness on not less than four occasions in the preceding twelve months."

An officer or a N. C. O. may be charged before a C. M. with a single act of 175
drunkenness, whether committed on duty or not on duty (for a single act of drunkenness in the case of an officer or N. C. O., affects the position of the offender), but a N. C. O. will not be punished summarily by his C. O. for the offence of drunkenness.
The C. O. is to deal summarily with the case of a soldier drunk, when not on duty 46
nor warned for duty, unless he has been guilty of drunkenness on not less than four occasions in the preceding twelve months.

When drunkenness is accompanied by another offence, for which the offender is to be tried by C. M., the act of drunkenness is to be summarily dealt with by the C. O. previous to the trial for the offence.

Yet the discretion of a C. O. with respect to sending cases of drunkenness not on duty for trial is unfettered, and it is for him to judge whether the offence committed is of so serious a nature as to require being brought before a C. M.

CHAPTER VII.

COURTS OF INQUIRY.

There is no material difference between a "Board" and a "Court of Inquiry;" by Regulations they are considered the same; hence, all Boards specified in the Regulations may be regarded as Courts of Inquiry, but Courts of Inquiry which are specially directed to be assembled for some extraordinary purpose are different. These are of two kinds:—

1. *Royal Commissions*, held under the prerogative of the Crown, instituted by a special warrant issued for the occasion, such as to enquire into the failure of expeditions, etc. The proceedings of these courts are privileged, being secret proceedings, and oaths are administered under the prerogative of the Crown. The duties of these commissions are quite undefined, but they proceed by the custom of the service, and in accordance with their particular instructions.

2. Courts of Inquiry, held under statute for the purpose of determing the illegal absence of soldiers.

70, 177 This court is for the purpose of recording a fact, and is the only one (except Royal Commissions) which can take evidence on oath. It is assembled when any soldier has been absent from duty for twenty-one days. It is composed of three officers. Witnesses are examined (on oath) as to the fact of the soldier's illegal absence, and the deficiencies, if any, of his kit. The court is then required to declare the period of absence and deficiencies of kit. This declaration is to be recorded in the regimental books by the C. O., and if the soldier never rejoins, such entry has the legal effect of a conviction for desertion. If he does rejoin, the record is legal evidence on trial for his absence and the deficiencies of kit.

The members of the court are not themselves sworn, and witnesses take the same oath as is prescribed at a C. M.

Ordinary Courts of Inquiry may be held for all kinds of purposes, such as to report on soldiers about to be discharged, to report on any injuries received, on officers taken prisoners of war to ascertain whether the occurrence was due to the chances of war or the result of un-officer-like conduct, to report upon officers wounded in action to secure for them a pension for life, etc., and are also assembled for aiding a C. in C., a General commanding a district, or any C. O. of a regiment or detachment, in determining any matter on which he may wish to have further information.

The following are the Regulations respecting Courts of Inquiry:—

A Court of Inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps. It may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation. Three officers are generally considered sufficient in ordinary courts.

The court is guided by the written instructions of the officer assembling it. These instructions should be full and specific, and must state the general character of the information required from the court in their report,—*i.e.*, whether they are merely to collect evidence, or go further and give an opinion, &c.

A Court of Inquiry has no judicial power, and is in strictness not a court at all, but an assembly of persons directed by a C. O. to collect evidence with respect to a transaction into which he cannot conveniently himself make inquiry.

Previous notice should be given of the time and place of the meeting of a Court of Inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

Whenever any inquiry affects the character of an officer or soldier, full opportunity must be afforded such officer or soldier of being present throughout the inquiry, and of making any statement he may wish to make, and of cross-examining any witness whose evidence, in his opinion, affects his character, and of producing

any witnesses in defence of his character. Such a court has no power to compel civilian witnesses to attend, and evidence cannot be taken on oath. Military witnesses would, of course, be ordered to attend.

A Court of Inquiry is not to give an opinion on the conduct of any officer or soldier, and the proceedings of these courts cannot be given in evidence against an officer or soldier. Nevertheless, in the event of an officer or soldier being tried by C M., in respect of any matter or thing which has been reported on by a Court of Inquiry, such officer or soldier shall be entitled to a copy of the proceedings of the Court of Inquiry.

The whole of the proceedings are forwarded by the President to the C. O. who assembled the court, and the latter will, on his own responsibility, form such opinion as he thinks just.

When, in consequence of the assembling of a Court of Inquiry, an opinion adverse to the character of any officer or soldier is formed by the officer who determines the case so inquired into, whether such officer be the officer who assembled the court, or a superior officer to whom the case has been referred by such last mentioned officer, such adverse opinion must be communicated to the officer or soldier against whom it has been given.

The court may be re-assembled as often as the convening officer may direct, for the purpose of examining additional witnesses or recording further information. Members of a Court of Inquiry in a case which is subsequently the subject of a C. M., may not be detailed as members of the C.M.

The proceedings of a Court of Inquiry are recorded in a form similar to that for C. M. They are signed by the President and each member; if any one of them differ from the others, he is entitled to record his opinion separately.

The proceedings are usually kept secret. They are *privileged*, and recognised as such by civil courts. When the conduct of officers or soldiers is matter of inquiry, they cannot legally refuse to attend, if ordered, though they may decline to take any part whatever in the proceedings,—that is, they may refuse to answer any questions, &c.

Investigation of injuries received.—A soldier becoming maimed or injured, even by the merest accident, used to be tried by C.M. Now there is first of all a Regimental Court of Inquiry, and only if the latter reports it wrongful is a C. M. summoned. This Court of Inquiry has to ascertain whether the injury was caused by accident or design; whether inflicted on himself, or by another at his instigation, with intent to render him unfit for the service.

Discharge Boards.—Regimental Discharge Boards are assembled to record the services, character and cause of discharge of any soldier, at the close of his military service, with a view to his being pensioned or not. It is composed of three officers. The second in command in the regiment is to be President, and the two next senior officers members. The duty of the Board is to make a faithful and impartial record of the soldier's services, conduct, etc., in accordance with the rules of the service. A declaration to this effect is to be made by the members in the presence of the soldier whose case is under inquiry.

CHAPTER VIII.

EVIDENCE.

125 The rules which guide C. M. as to the admission and rejection of evidence must be the same as those which guide Civil Courts; and no person can be required to answer any question or produce any document which he could not be required to answer or to produce if before a Civil Court.

The five rules of evidence are the result of accumulated experience of the ablest lawyers, as to the best and most direct way of arriving at the truth. Yet there are some statutes which also lay down what shall be evidence in certain cases,—these chiefly refer to documentary evidence, and not to verbal.

In applying these rules, evidence is doubtless occasionally excluded which might be of great importance to both sides; yet no system is perfect, and these rules are acknowledged to have the effect of arriving directly at the truth, and of protecting the court from lengthened trials, and the accused from false conclusions.

Eminent writers on Military Law agree that a C.M. should adhere to these rules of evidence strictly, and, as far as possible, avoid minute points and subtle variations not essential. Ordinary cases tried by C. M. are so simple that the rules of evidence scarcely come into use, yet in more important cases, which attract public attention, any departure from these rules would cast discredit upon Military Courts. Often the question of admissibility of evidence forms an important part of the trial, especially in cases of embezzlement, and the prisoner frequently has a legal adviser, which neither the prosecutor nor Officiating J.A. have.

Another eminent lawyer, stating that the laws of evidence should be regarded, said:—"I cannot understand how justice can be done by persons who do not understand what tends to prove guilt or establish innocence."

It is the duty of the J.A. to advise the court as to the admission or rejection of evidence, and as in the colonies these are generally staff officers, it is important to know the principles on which evidence should be admitted or rejected, especially as more C.M. are quashed on grounds of want of knowledge on the question of evidence than on any other.

The General Rules of evidence are five in number:—

1. The evidence on either side must be confined to the points in issue.
2. The point in issue must be proved by the party who asserts the affirmative.
3. It is sufficient to prove the substance of the issue or charge.
4. *Hearsay* is not evidence.
5. *The best evidence* must be produced which the nature of the case will admit of.

1st Rule.—A C.M. cannot insist too strongly upon rejecting all evidence which is foreign to the charge, but circumstances which may not have any immediate or direct bearing upon the very point in issue, may, nevertheless, afford an indirect and consequential inference to prove or disprove the disputed fact, and, therefore, evidence to prove them ought not to be disallowed, provided the party who urges them shall satisfy the court as to their relevancy. For instance, in a case of desertion, the purchasing of plain clothes by the prisoner would afford grounds for the inference that he had no intention of returning, and, therefore, evidence to prove such fact would be admissible.

This 1st Rule includes —1st. Evidence as to character; 2nd. Evidence in *Res gestæ*.

It is acknowledged that evidence may be given of acts so closely in connection with the matter in issue as to form one chain of facts, and that their exclusion would make the rest of the evidence at least obscure. Hence, such come under the rule of confinement to the point in issue.

Definition of *Res gestæ*—"Matter so connected with the subject of the trial as to explain its object, illustrate its character and form with it one continuous transaction, though not in itself proof of the main fact"

It is admitted that facts, by whomsoever done, if relevant to the matter in issue, may be given in evidence as part of the *Res gestæ*.

In case of *conspiracy*, the connection of each individual with the conspiracy must first be proved, and then the acts of each member are, in the eyes of the law, the acts of the whole confederacy, and hence all evidence on such acts are admitted as against any member.

It is now held to be no objection in itself, that evidence discloses other offences. Evidence cannot be refused on such grounds. This rule, however, must not include evidence to show that a prisoner charged with a particular crime had a general tendency to commit that particular kind of crime, nor that he had committed other offences of the same kind quite unconnected with the crime in question.

Thus on a charge of murder, former acts or conduct towards deceased showing goodwill or malice would be relevant, but conduct towards other persons would not be relevant.

On this head it often happens that evidence, otherwise inadmissible, serves to identify the prisoner with the crime—as his having been in a certain place at a certain time, and of having an opportunity of committing the crime.

Also, in a case of arson, evidence that property then taken out of the house while on fire was found in the prisoner's possession, is admissible.

It lies at the discretion of the court whether to accept or refuse such evidence.

Clode, in his Chapter on Evidence, says:—"A collateral inquiry into other facts and circumstances should only be received when they bear upon the charge and constitute presumptive proof."

The court would act wisely in receiving rather than rejecting doubtful evidence, *if tendered by the prisoner.*

2nd. Rule.—That the point in issue is to be proved by the party who asserts the affirmative, is a rule of evidence arising from the difficulty, in many cases the impossibility, of proving a negative. Thus, the burden of proving the charge usually rests on the prosecutor, who asserts that the prisoner has committed such and such a crime, and he must prove the commission of that crime, *i. e.*, he "asserts the affirmative." The burden of proof or *onus probandi* is in many cases, however, shifted to the prisoner in consequence of the "presumptions of the law," and "presumptions arising from the evidence."

For instance, proof of the possession of stolen goods shifts the necessity of explaining his having them to the prisoner; proof of absence without leave for a considerable time shifts to the prisoner the burden of proving his intention to return, and so in like cases the burden of proof rests with him who has to support his case by the proof of a fact, in every instance where it must be supposed to be within his knowledge.

PRESUMPTIONS OF THE LAW.

The presumptions of the law with reference to criminal matters are simple and easily defined, and they hold good until the contrary is proved:

1. That every man is innocent until the contrary is proved.
2. That every man is acquainted with the state of the law.
3. That every man must contemplate the necessary and natural consequence of his own act. Ex: The law presumes malice when a man has been killed. The indictment for murder always runs "with malice aforethought," but it is unnecessary to prove the malice.

There are other presumptions of the law which are specially defined by Statute. For instance, in cases of larceny, if a man is found by night with weapons used for housebreaking, with intent to commit a felony, the law presumes he is there with such intent, and the onus of proving he had a proper right to these weapons lies on the prisoner.

Setting fire to a Mill:—The judges ruled that it might be assumed that there was intent to murder the occupiers.

The following is Lord Mansfield's rule:

"Where an act, *in itself indifferent* (*i. e.*, not criminal), if done with a particular intent becomes criminal, then the intent must be proved and found, but when the act is in itself unlawful, the proof of justification or excuse lies on the accused, and the law implies a criminal intent."

This principle holds good if the act be done by a man when voluntarily drunk and therefore without premeditation.

A letter when used against the writer, and generally any document, is presumed to have been written on the day of its date until the contrary has been proved.

Persons absent for seven years are presumed to be dead, hence bigamy cannot be found after seven years, etc.

NEXT CLASS—PRESUMPTIONS DRAWN FROM THE EVIDENCE.

Definition by Chief Justice Abbot—"The presumption of any fact is an *inference* of that fact from other facts that are known; it is an act of reasoning."

Archibold.—"Natural conclusions from other facts proved, so as readily to gain assent."

The necessity for admitting such evidence, known as "circumstantial evidence" in criminal cases, is owing to the difficulty of gaining direct and positive evidence. Such presumptions, standing in the place of actual proof, have several degrees of weight.

Archibold divides them into three classes.—Violent, probable and slight.

1. Violent presumption.—When the presumption of one fact necessarily follows from another fact proved. (As a man found near a house with goods stolen out of it.)

2. Probable presumption.—When the facts proved are *usually attended* by the facts presumed. As a man found with stolen goods in his possession, but not in the vicinity of the place where stolen, as at his lodgings,—it would be a probable presumption that he is *a* thief, but a violent presumption that he is either *the* thief or the receiver with guilty knowledge, and a prisoner with such a presumption against him has to prove it false.

In cases of theft it must be first proved that the articles have been stolen, and then identified, but this is not always possible; as when articles such as sacks of corn have been stolen out of a barn or ship, then, if the articles in possession of the prisoner are found to be of the same kind as those remaining, the identification is presumed to be complete, and this is a violent presumption. Also, presumption of guilt depends considerably on the length of time stolen goods have been in possession, for *recent* possession may be taken to imply a presumption of guilt.

Insanity.—Every man is assumed to be sane until the contrary is proved.

To establish the defence on the ground of insanity, it must be proved that the accused at the time of committing the act was labouring under such a defect of reason that he did not know the nature and the quality of the act, or if he did this, that he did not know it was wrong.

The evidence of insanity must be confined to the *act in question*, not to the general state of the accused.

A temporary delusion may have the effect of acquittal, as it has been ruled that "if a man kills another whom he fancies to be taking his life, he must be acquitted." If he killed him in revenge for destroying his character or fortune he is punishable."

3rd Rule.—That it is sufficient to prove the substance of the issue or charge is applicable in cases where there is a variance between the evidence and the charge, that is, if the *essence* of the issue is proved, an offence of the same kind but of less degree may be found. This rule has already been alluded to under "punishments." A prisoner charged with desertion may be convicted of absence without leave, for absence is the substance of the charge, the motive and design being matter of aggravation. A person charged with murder may be found guilty of manslaughter,—the

killing being the essence of the offence, malice the aggravation. A prisoner charged with offering violence to his superior officer in the execution of his office, may be convicted merely of offering violence, for offering violence is the essence of the charge, the rank of the person and the fact of his being in the execution of his office being circumstances in aggravation, and it may be shown that the prisoner did not know the rank and position of the person assailed.

It has been ruled in Civil Law that, "if the evidence fail to prove the completion of an offence charged, the verdict may acquit of the offence itself, but convict of an *attempt* to commit such an offence, provided the attempt is itself against the law. On such conviction he may be punished as if he had been charged originally with the attempt." Thus a prisoner charged with desertion may be convicted of an attempt to desert.

When it is found that the names of persons or things, or ownership of property, as stated in the indictment, do not agree with the evidence, a Judge in a Civil Court may amend the indictment, but a C. M. cannot alter a charge which has been approved by the convening officer, but in the finding a "special finding" is given which specifies the amendment. The result is the same in the two cases, but the mode of proceeding is different.

In an indictment for larceny the evidence must agree with the charge in the species of articles stolen, but not necessarily in the number or value of the articles. Money or bank notes are simply charged as money, it not being necessary to describe the coins, whether gold, silver, &c. A form for words spoken in order to meet unimportant variances is laid down in regulations, and is found to be very efficient. When certain words spoken constitute a crime they are preceded by "in substance and to the effect following, that is to say."—

A prisoner cannot be found guilty of a crime of greater degree than that charged (except embezzlement for theft), or of an offence of a different nature; but if arraigned for a lesser offence and found guilty of a greater degree of the same kind of offence, he may be convicted of the lesser offence. As a man tried for desertion may be found guilty of absence without leave, and convicted and punished for that offence.

4th Rule—That hearsay is not evidence arises from the admitted principle of English Law that every fact against a prisoner should be *proved on oath*, and in the presence of the accused, so that he may have an opportunity of *cross-questioning the witness* as to his means of knowledge, his accuracy of observation, the strength of his recollection and his disposition to speak the truth. Hearsay evidence is, therefore, rejected for these two reasons, viz.:—That what the person said was not upon oath; and that the prisoner had no opportunity of cross-questioning the individual.

The term "hearsay," in its legal sense, is used with reference both to that which is written and to that which is spoken, being applied to that kind of evidence which does not derive its effect solely from the credit to be attached to the witness himself, but depends also in part on the veracity and competency of some other person, from whom the witness may have received his information. Although hearsay is not evidence, words or writings of third parties are often admissible in evidence, not in proof of circumstances related in such words or writings, but merely in proof of such words or writings having been spoken or written, as being in fact transactions concerning which inquiry may be instituted as to whether they have taken place or not.

As exceptions to the general rule that hearsay is not evidence, the dying declaration of a man who has received a mortal injury is admissible in evidence where the death is the subject of the charge, and the circumstances of the death the subject of the dying declaration. The declaration of a person robbed, or of a woman ravished, as to the fact, made immediately afterwards, may be received as confirmatory evidence, but no names or details of what was said at the time are received.

5th Rule. The best evidence must be produced which the nature of the case will admit of.

Secondary evidence is only admissible when the best and most direct cannot be had.

The evidence produced must be legal evidence, for instance, if the best evidence obtainable be hearsay it would be inadmissible. The best legal evidence not being

obtainable, then, and then only, is the next best legal evidence admitted,—for the production of secondary evidence, when better evidence is obtainable, would tend to raise a presumption of some secret or sinister motive for withholding the better and more satisfactory evidence and would lead to the inference that the better evidence, if produced, would disclose some concealed falsehood.

Secondary evidence will not be received until it has been clearly shown to the satisfaction of the court that better cannot be obtained.

The law will receive the following secondary evidence :—

Statements in ancient documents, and also statements of deceased persons as to pedigree.

Evidence as to reputation of being a good authority in technical matters (as doctor, engineer, &c.)

Evidence of deceased persons when speaking against their own interests.

Statements found in the deceased's writings, as entries in books, &c., when carrying on their professional duties.

Statements having reference to health and sufferings of a person; as in the case of murder.

FURTHER EXCEPTIONS.

A soldier is charged with coming to the knowledge of an intended mutiny and not giving information. To prove this the existence of a conspiracy to mutiny must first be proved whether the prisoner was there or not. To do this evidence must be taken of what others have done or said. But the particulars of such sayings and doings must only be given *when said or done in the hearing of the prisoner*, otherwise only the general purport of such sayings sufficient to show that a conspiracy existed.

It is often necessary to prove that a certain order was given, or that a person was acquainted with certain facts at a certain time. What has been said or written would, under such circumstances, be important evidence and not classed under second hand evidence.

The value of evidence and what constitutes sufficient evidence, is a matter which cannot, of course, be defined by law.

WRITTEN DOCUMENTS.

The most important application of this (5th) rule is to the contents of written documents.

The broad rule is "contents of documents must be proved by the production of the documents themselves."

A copy is not allowed unless the original is not forthcoming and then it must be proved to be a true copy.

Although originals are required to be laid before the court whenever practicable, copies or extracts may be attached to the proceedings.

The following are certain exceptions not provided for by the Statute :—

1. When the original document is lost or destroyed, secondary evidence is admissible, but it must be shown that the document was lost or destroyed, or that diligent search has been made for it in the proper place.

2. When it is in the hands of the opposite party who refuses to produce it. It must be proved to be in his hands and that he has been served with a summons to produce it.

3. When it is in the hands of a person privileged to withhold it, who insists on his privilege.

4. When it is physically impossible or highly inconvenient as to make it almost impossible to produce it.

5. Documents of a public nature.

The following are certain privileged communications which are exempt from production :—

1. Communications between husband and wife made during marriage, and which do not cease on death or divorce.

2. Communications, written or verbal, to legal advisers, barristers, solicitors or attorneys professionally employed. The privelege does not extend to any other class of persons whatever, as clergymen in confession, medical men, clerks, or confidential friends, but it does extend to clerks or interpreters of barristers employed by them at the trial.

3. *State Secrets*, or matters the disclosure of which would be prejudicial to the public.

In Crown prosecutions the names of persons giving information need not be disclosed—as a detective, not to divulge his informant, states:—"From information received." This is a very important privilege.

4. Official communications between heads of departments and subordinate officers are privileged.

Exceptions by statute to the rule that the best evidence must be produced.

Public documents are admissible by secondary evidence, *i. e.*, copies are allowed.

Public documents are held to be the acts of *public functionaries* in the execution of their business.

All public books and documents, such as registers, kept under the authority of particular statutes, are admitted as evidence of such facts required to be entered therein as are peculiarly within the knowledge of the Registering Officer. For instance, the Prison Register is admissible to prove the dates of commitment and discharge of prisoners, but not to prove the cause of commitment.

Whenever any book or other document is of such a public nature as to be admissible in evidence, any copy or extract is admissible provided it be authenticated by the officer to whose custody the original is entrusted.

But all other documents which do not come within the above category, and all letters of whatever description, whether official or not, must be proved by primary evidence.

Private writings, including what are known as official letters, are in no case evidence of the fact stated therein, but they are the best evidence of their contents, (not the truth of their contents) and are, therefore, admitted when in the nature of acts, or as proof of intention, or when they form part of the subject matter of a charge, as when the charge is for writing a disrespectful letter, for disobeying a written order, &c.

The following are some of the principal cases when documentary and secondary 155
evidence are admissible at C. M.:—

1. Evidence of former convictions by C. M. or by Civil Court.

2. The attestation paper purporting to be signed by a recruit, or a declaration on re-engagement, to prove the several particulars represented therein.

3. The last quarterly pay list is evidence of being borne on the strength and in pay of corps.

4. Descriptive return of a deserter sent by a Justice of the Peace to S. of S. for War is legal evidence of facts stated, and S. of S's. letter to C. O. in reply.

5. A letter from any C. O., or commander of a ship from which any person shall appear to have been discharged, shall be evidence of the facts stated.

6. Record of a man's confession of desertion by his C. O. to prove the making of such confession.

7. Letter from his former C. O. in reply to enquiry on the subject to prove facts therein stated.

8. Record of Court of Inquiry on illegal absence to prove facts therein stated.

9. Evidence before any C. M. or Court of Inquiry on illegal absence, to prove that such and such statements were made before them, but no proof of the facts.

10. Court Martial book or defaulter's book to prove previous convictions, either civil or military, and defaulter's book to prove instances of drunkenness.

11. A copy of any of the above records, certified to be a true copy by the officer having the custody of such record, is evidence.

12. Queen's regulations, royal warrants, army circulars, general orders, need not be proved.

13. Purporting to be printed by Queen's or Government printer is proof of the legality of documents.

14. An official army list is evidence of status and rank.

15. Delivery at the registered place of abode of a man in the army reserve of a notice issued by proper authority, is evidence that such notice was brought to the man's knowledge.

The meaning of "purporting to be signed," (Act 89 Vic.) makes it unnecessary to prove the seals or the writing or official character of the person who signs a document and takes for granted it is properly signed unless the contrary can be shown. By the same Act a safeguard against forgery is made, as any document may be impounded in court on the application of either party with a view to proving it a forgery.

Parole evidence cannot be substituted for any evidence which the law requires in writing, unless it is first shown :—1. That the document had no existence, or, 2. Account *why* and *how* it cannot be produced.

The producer of secondary documentary evidence must know it to be a *true copy*. Thus a prosecutor must have compared it with the original. If say, the adjutant signs copy of defaulter's book, goes away and leaves another officer to prosecute, the latter's evidence is not admissible if he has not compared the extract with the original *himself*.

When secondary evidence is admissible, a copy of an original document is no evidence in itself, and only becomes so when verified by the oath of a witness.

PROOF OF HANDWRITING.

1. Best evidence is the writer.

2. Next the person who saw the writing done.

3. Then any who know the handwriting, having actually *seen* him write. It is not sufficient to have merely had correspondence with him.

The comparison of a disputed writing with a writing proved to be genuine may be made to prove the handwriting.

EVIDENCE AS TO CHARACTER.

The character given of a prisoner must have some connection with the charge, as it is no use to give a person charged with murder a character for honesty, though probably a C. M. would receive such evidence.

In addition to the evidence produced after the finding, a prisoner may produce evidence as to his character during the trial, and such is received as part of his defence. The prosecutor may cross-examine such witness, but he may not bring other witnesses to rebut their statements till after the finding, as the prosecutor can bring no evidence against the prisoner's character till after the finding.

After the finding both parties may produce witnesses as to character and cross-examine them.

(In prosecuting, a prosecutor may refer to any papers or books to refresh his memory, but he may not read them or lay them before the court.)

Sometimes prisoners lay before the court testimonials, letters as to character, etc. Such documents are not legal, as such evidence must be *viva voce* and made by witnesses who can speak from their own knowledge regarding the prisoner.

In C.M. it is however usual not to accept such documents as evidence, but as an indulgence to the prisoner, and to append them, *not* to the proceedings, but to a separate letter forwarded to the confirming officer for him to take them into consideration, and, if he thinks fit, mitigate the punishment.

CONFESSIONS BY PRISONERS.

Voluntary confessions of prisoners, whether made before apprehension or after, with reference to the charge to be made, are admissible; and a confession is deemed voluntary unless proved to the contrary.

Any threat, promise or hope of pardon held out or sanctioned *by any person in authority* will prevent the admission of such confession.

The following are considered persons in authority over a prisoner:—

The prosecutor; the constable in charge of a prisoner; any authority over him, judicial or not, as the master or mistress in case of theft by a servant.

Any person apprehending another who is guilty of felony is a person in authority.

From this it is deduced that the commander of a guard or a sentry over a prisoner are persons in authority.

There is no objection whatever to such receiving a purely voluntary confession, but it is necessary for them first to warn the prisoner that what he says will be used in evidence against him.

It is considered highly objectionable for a constable or any person in authority to interrogate a prisoner on a charge.

The inducement of a third person persuading a prisoner to confess in the presence of a person in authority, renders it inadmissible; but if one prisoner urges another to confess in the hearing of a keeper such confession is admissible.

A confession obtained by artifice or deception is not in the same category and does not invalidate the confession.

Ex: A prisoner is led to believe that all his accomplices are in custody, confesses, his confession holds good.

A prisoner gives a letter to the gaoler to post, the letter is detained and is good in evidence.

A prisoner confesses to another who takes an oath not to reveal, breaks his oath, the confession holds good.

A C.M. would probably reject such confessions because obtained by fraud, although it would be legal to accept them. Also, a C.M. would not accept admissions made by a prisoner against himself before a Court of Inquiry, though it would be legal to do so, and even though the prosecutor might request such admissions to be received, the court would overrule him on the principle that they were made in a collateral matter, or on the broad rule that a C.M. *does not convict a man out of his own mouth.*

Admissions made by a witness at a trial may be used subsequently against him, for a witness may decline to answer any question tending to incriminate himself, yet if he does so he is responsible.

Confessions of any kind are evidence against the party making them only, and not against another, *e.g* not evidence against accomplices.

A confession is deemed voluntarily made unless disproved, for the prisoner is deemed at liberty to open his mouth or not.

MODE OF PRODUCING A WRITTEN CONFESSION.

If it has been written or signed by the prisoner, or its truth acknowledged by him, it may be received and read to the court; but if taken down by a person and not signed by the prisoner it is not evidence, but can be used by the person who took it down as a memo. to refresh his memory.

DEPOSITIONS.

A deposition taken on oath before a magistrate *in the presence of the accused*, who shall have had an opportunity of cross-examining the deposer at the time, may be had in evidence at the trial of the accused, when it shall have been proved at the trial that the witness is either dead or so ill as to be unable to attend, but under no other circumstances.

The application of this rule is very strict, a mere ordinary indisposition is not sufficient; it must be proved he is unable to be present by the surgeon in person, a medical certificate not being deemed sufficient.

If the inability to attend is not permanent, the Judge exercises his discretion whether to postpone the trial or accept the deposition.

When it appears to a Justice of the Peace that a person is dangerously ill and not likely to recover, and that such person is able and willing to give material evidence with reference to an indictable offence, or relating to any person accused, such Justice may take down in writing the witness' deposition on oath, and such Justice shall sign it, record the reasons for taking the deposition, where taken, and the names of all persons present.

Reasonable *notice* must, however, be given to the person accused of the intention to take the deposition, so that the accused may be present to refute the evidence thus taken. If in custody, he is to be brought for the purpose; if not, it is optional for him to attend. Then at the trial, if the witness is dead or too ill to attend, the deposition may be read in court.

Prisoners are entitled to copies of such depositions against them.

Dying declarations or statements of any kind are admissible only under very restricted conditions, viz:

1. When the subject of the charge is the death of the person, *i. e.*, relates only to the cause of death, and only

2. When such person really thinks himself beyond hope of recovery, and to be in the presence of death.

Such declaration is not invalidated if the man recovers, or lives longer, contrary to expectation.

It is not enough for the person to say he believes he will not recover, nor to express vague fears that he is about to die, but it must be shown that he really believed *in his own mind* that he had no hope of recovery.

Such declarations are admissible on the principle that the party injured is not forthcoming, having been killed, and that it is not likely, considering the solemn circumstances, that the party would tell an untruth.

It often happens in cases of murder that the constable obtains a statement from the dying person as to the cause of his wounds, etc., and this is received in evidence if done in the proper way, as follows:—

My name is ..... age ..... place of abode ..... and *believing myself dying*, I make the following statement:—

The expression of belief is the essence of the statement, and it only makes the statement evidence.

EVIDENCE OF EXPERTS.

Witnesses who depose *to the best of their belief or knowledge* as to handwriting; Medical men as to the causes of death, or as to insanity; Engineers, etc., may be convicted for perjury for false evidence.

WITNESSES.

The law of England admits as sufficient the testimony of one creditable witness, but two are required to prove *perjury*, because, with only one witness, there would be one oath against another which would neutralize each other.

But in cases of perjury it is sufficient if *one* witness prove the perjury directly, while strong circumstantial evidence would be sufficient for the second.

If the defendant has sworn in one case contrary to what he has sworn in another, *one* evidence is sufficient to throw the balance over against the defendant.

In trials for high treason two witnesses are required, except in cases of high treason in compassing or imagining the Sovereign's death.

It is usual, however, on all trials by C. M. to have the testimony of two witnessess for the prosecution, though not always legally necessary. The evidence of an accomplice even may suffice, and conviction thereon be strictly legal; still it is only prudent that the charge should be confirmed by unimpeachable testimony in some material point.

COMPETENCY OF WITNESSES.

The person accused is not a competent witness for or against himself.

In the case of several prisoners being tried separately for the same offence, any one not on his trial is a competent witness for, but not against the others; prisoners jointly arraigned are incompetent witnesses on the trial of each other. A prisoner who may desire to avail himself of the evidence of a person included in the same charge, should therefore apply for a separate trial.

Witnesses are competent notwithstanding they have an interest in the case, or have been convicted of a criminal offence not bearing on the subject under trial.

When persons are jointly arraigned and there is no prospect of obtaining other evidence, one man implicated may receive a separate verdict of acquittal, and then he can become a witness against the rest. This turning "*King's* evidence" is often brought about by promises of reward, etc.

In C. M. the usual course would be not for the court to give a verdict of acquittal, but for the convening officer to dispense with the trial of any one of the accomplices, who can then become a witness.

Idiocy, confirmed insanity, or immaturity of intellect, render a witness incompetent. In lucid intervals, persons of disordered intellect are competent witnesses.

The admissibility of a child to give evidence is regulated, not by his years, but by the development of his mental faculties, by his religious knowledge, and by the sense he may entertain of an oath, subject to which a child of any age may be examined as a witness, and is sworn like any other witness.

The law assumes that every child of fourteen is capable of giving evidence, but at the discretion of the judge or court much younger children are admitted. "A child must be able to understand the obligation to speak the truth."

A prosecutor, though he may have himself originated the charges, or may, in any other way, be personally interested in the result, is a competent witness.

Husband and wife are not admitted as witnesses for or against each other in any criminal proceeding, where one of them may be party, except in cases of personal injury of either by the other, but evidence of either for or against another person is received, even though such evidence is liable to incriminate the husband or wife. *All* other relationships are exempted from this rule.

Deaf and dumb may now give evidence in writing or through a sworn interpreter.

Want of religious belief does not render a witness incompetent, as it is ruled that a witness must be sworn in that form which he feels binding on his conscience. A recognized form is, "I hereby solemnly promise and declare that the evidence I give * *," and if he gives false evidence he may be indicted for perjury as if he had taken an oath. A witness may be asked after being sworn whether he considers the oath binding; if he answers in the affirmative it is sufficient.

EXAMINATION OF WITNESSES.

The examination should be conducted by question and answer, yet frequently witnesses are directed to state what they know relative to the charge. A witness is first examined by the party producing him. This examination is termed the "examination-in-chief." He is then "cross-examined" by the adverse party, after which he may be "re-examined" by the party who produced him, on such fresh matter as may have been brought out by the cross-examination; and, finally, the court put such questions as in their opinion may tend to elicit the truth. The court may put questions at any time, but it is preferable to do so after the other parties have done.

The cross-examination is not limited to the matter which has been alluded to in the examination-in-chief, but extends over the whole case. It must, however, be relevant.

The reading of the charge to witnesses is not a recognised principle, though done in most ordinary cases. It is the custom to examine witnesses separately while the other witnesses are withdrawn; but no witness is incompetent by reason of his having been present during the evidence of another witness, although either side

may request another witness to withdraw. For this reason it is laid down that if a prosecutor is also a witness, he should, if possible, be examined first.

Witnesses may be confronted, one with another, in court, to clear up discrepancies, identity, etc.

A witness once sworn may be cross-examined, though he may not have been examined in chief.

"Leading questions" are not admissible in the examination-in-chief or in the re-examination, but are admitted to the fullest extent "short of putting words into a witness' mouth" in the cross-examination, the principle being that the law assumes a witness to be biased in favour of the side which calls him, and hostile to the opposite side. A leading question is one which suggests the answer.

Exceptions. Leading questions are admitted in introductory questions, with a view to save time and to come more speedily to the points at issue, as—Were you in such and such a street at such a time?

If a witness has described a person, the person may be pointed out, and he may be asked—Is that so and so?

Where a witness has sworn to a certain fact, and another is called to contradict that fact, he may be asked directly—Did that fact take place?

When a witness is obviously hostile to one party, and is contumacious, and will not answer direct questions, the counsel usually asks the permission of the court to put leading questions to him, which the court may allow.

Leading questions are sometimes allowed to be put to youthful witnesses, whose attention cannot otherwise be called.

A witness once cross-examined may have leading questions put to him on re-examination.

A witness is not permitted to read his evidence, but he may refresh his memory by referring to memoranda, entries in books, etc., made by him when he had a distinct recollection of the fact, or made by another and examined by him whilst the fact was fresh in his memory. The opposite party has a right to inspect the document, and may cross-examine the witness upon it, as to its origin, author, possession, etc.

A witness may decline to answer any question tending to criminate him. He may also decline to answer any question tending to degrade him, unless the transaction as to which he is questioned is material to the issue. As in cross-examination, when an attempt is made to impugn the character of a witness or to prove what he has said is false, he need not reply. If the witness chooses to answer a question tending to degrade him only indirectly bearing on the charge, the party who asks the question is bound by the answer, and is not allowed to disprove it by other evidence, except in the case of the witness denying having been convicted of felony or misdemeanour, when the opposite side may bring evidence to show that he has.

The prosecution being closed, the prisoner is placed on his defence, and may either open his case with an address, or proceed at once to the examination of witnesses.

When two or more prisoners are tried together, the defence of each is separately recorded.

The prosecutor is entitled to produce evidence in reply, when the prisoner in his defence has examined witnesses and brought out points not touched on in the prosecution, or produced evidence reflecting on the credibility of the prosecutor's witnesses, but he must be confined to re establishing the credibility of his witnesses, to impeaching the witnesses for the defence, and to rebutting the new matter. He cannot be allowed to repair omissions by producing evidence directly in support of the charge.

It is irregular to adjourn the court for the purpose of obtaining further evidence on either side, but as an indulgence it is sometimes extended to the prisoner but never to the prosecutor.

APPENDIX.

Form of Proceedings of a General C.M. (including some of the more unusual incidents which may occur to vary the ordinary course of procedure, with instructions for the guidance of the court).

PROCEEDINGS of a GENERAL COURT-MARTIAL, held at_____ on the_____day of_____188_____, by order of _____Commanding_____, dated the_____ day of_____, 188_____.

PRESIDENT.

MEMBERS.

Rank.	*Name.*	*Regiment.*

_____, Deputy Judge Advocate.

At_____o'clock the Court opens. **First Day.**

(1.) [*No.—Rank—Name—Regiment*] is brought a prisoner before the Court.

[*Rank—Name—Regiment*, appears as prosecutor. Instruction.—*If possible no officer who is to be called as a witness is to be appointed to act as prosecutor.*]

The order for convening the Court, and the warrants appointing the President and Deputy [*or* officiating] Judge Advocate, (in these rules referred to as Judge Advocate), are read.

The names of the President and Members of the Court are read over in the hearing of the prisoner, and they severally answer to their names.

Do you object to be tried by me as the President, or by any of the officers whose names you have heard read over? **Question by the President to the Prisoner.**

[*Instruction.*—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for "Question" and "Answer" respectively.]

N.B.—For General and District C.M., W.O. Form 642, to be obtained from General Officers commanding, is to be used in accordance with these instructions.

VARIATIONS.

Challenging President.

Answer.—I object to_____

Question to the Prisoner.—State your objection?

Prisoner.—

The prisoner in support of his objection, requests permission to call _____ is called into Court, and is questioned by the prisoner.

The Court is cleared.

Decision.—The Court disallow the objection.

The Court is re-opened and the above decision made known to the prisoner. *Or,*

The Court allow the objection and adjourn, first informing the prisoner of the decision.

At_____o'clock the Court resume their proceedings, and a letter (&c,) is read to the prisoner marked_____and attached to the proceedings.

N.B.—The Judge Advocate cannot be objected to by the prisoner.

Challenging Member.

Answer.—I object to_____

Question to the Prisoner.—State your objection to_____.

Prisoner.—

The prisoner, in support of his objection to_____, requests permission to call_____, &c., &c.

The Court is cleared.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is read to the prisoner.

Decision.—The Court allow the objection.

The President informs that he is not required to serve on this Court Martial.

The Court is re-opened and the above decision is made known to the prisoner.

New Member.—(*Rank—Name—Regiment*) takes his place as a member of the Court.

Question to Prisoner.—Do you object to be tried by_____ as a member of this Court Martial?

Answer.—

(Any objection is dealt with as in the case of any original member.)

The President, Members and Judge Advocate are duly sworn (also any officer under instruction, and any shorthand writer or interpreter.)

[*Instructions.*—1. It is generally advisable that the witnesses be ordered out of Court at this stage of the proceedings.

2. All proceedings of the Court, except when it is cleared for deliberation, are to take place in the presence of the prisoner.

3. No C.M. should proceed to trial until they have satisfied themselves of their competence to deal with the charge, both as respects their jurisdiction and the precision with which the charge is worded.]

(**2**) The Prisoner [*No.—Rank—Name—Regiment.*] is arraigned upon the following

Charge

CHARGE.

_____ _____ _____ _____ _____

Question to the Prisoner

Are you guilty or not guilty of the charge against you, which you have heard read?

Answer. _____

VARIATIONS.

1. The prisoner not pleading [refusing to plead] to the above charge, the Court enter a plea of "not guilty."

2. *Plea.*—The prisoner pleads_____(in bar of trial).

Question to the Prisoner.—Have you any evidence to produce in support of your plea?

Answer.—_____

(Witness examined on oath.)

The Court are of opinion that the prisoner has not (has) substantiated his plea, and in consequence proceed with the trial and require him to plead to the charge (do therefore adjourn until further orders).

(3.) The Prosecutor reads the following address, which is marked___, signed by the President, and attached to the proceedings.

[*Instruction.*—When the prosecutor is required to give evidence he must be sworn.]

The Prosecutor proceeds to call witnesses.

(*Rank—Name—Regiment*) being duly sworn is examined by the prosecutor. First witness for prosecution.

_____ Q.

_____ A.

Cross-examined by the prisoner.

[*Instruction.*—Although a prisoner may have a professional adviser near him during the trial to advise him on all points, and to suggest, in writing, the questions to be put to witnesses, such adviser is not to be permitted to address the court or to examine witnesses orally.]

_____ Q.

_____ A.

Re examined by the Prosecutor.

_____ Q.

_____ A.

Examined by the Court.

_____ Q.

_____ A.

The witness withdraws.

[*Instruction.*—It is usual to read the whole of a witness' deposition to him before he quits the Court, in order that he may correct any accidental mistake or omission in the recorded minutes. The Court may put questions to witnesses at any stage, but it is preferable to defer them until the examination of the witnesses by the parties to the trial has been concluded.]

VARIATION.

The prisoner declines cross-examining this witness.

[*Instruction.*—In every case where the prisoner does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.]

Second witness for prosecution.

_____being duly sworn, is examined by the prosecutor.

(The examination, &c., proceeds as above.)

[*Instruction*—There is to be a line drawn between the recorded minutes of every two witnesses.]

At____o'clock, the Court adjourn until_____o'clock on the_____

_____ ____

Second day.

On_____, the_____of_____18__at_____ o'clock, the Court re-assemble, pursuant to adjournment; present, the same members as on_____

VARIATIONS.

Absent member.

(*Rank—Name—Regiment*) being absent.

(*The absence is accounted for.*)

The Judge Advocate produces a medical certificate, which is read, marked_____and attached to the proceedings.

The Court adjourned until_____

The Court being below the number required by the order convening the Court, adjourn until further orders or,

There being present (*not less than the least number required by the order convening the Court*) members, the trial is proceeded with.

New President.

A warrant is read, bearing date_____, appointing (*the senior member*) President of the Court-Martial in the place of_____who_____

The trial is proceeded with.

New Judge Advocate.

A warrant is read, bearing date_____, appointing_____to act as Judge Advocate in the place of_____, who_____is duly sworn.

The trial is proceeded with.

[*Instruction.*—No proceedings can take place in the absence of either President or Judge Advocate (if any).]

Examination (cross-examination) of_____continued.

Q. _____

A. _____

The prosecution is closed.

Question by the Court to the Prisoner.

Do you intend to call any witness in your defence?

A.

Yes.

DEFENCE.

Defence.

(**4.**) The prisoner having been called upon to make his defence, says:_____[*or* requests to be allowed_____days to prepare his defence.]

[*Instruction.*—If a prisoner's defence be verbal, it should be taken down as nearly as possible in his own words, and in the first person.]

The prisoner calls the following witnesses.

(*Rank—Name—Regiment*) is duly sworn. First witness for defence.

Examined by the Prisoner.

_____ Q.

_____ A.

Cross-examined by the Prosecutor.

_____ Q.

_____ A.

Re-examined by the Prisoner.

_____ Q.

_____ A.

Examined by the Court.

_____ Q.

_____ A.

The witness withdraws.

(5.) The prisoner reads an address, which is marked _____, signed by the President, and attached to the proceedings. Close of the defence.

[*Instruction.*—If necessary the Court may now be adjourned to enable the prosecutor to prepare his reply; the fact of adjournment being recorded as before.]

The prosecutor reads the reply, marked _____, which is signed by the President, and annexed to the proceedings. Reply.

[*Or* the prosecutor declines making a reply.]

The court adjourn until _____ to enable the Judge-Advocate to prepare his summing up.

(6.) The Court re-assemble on _____, and the prisoner being present the Judge-Advocate reads the summing up, which is marked _____, signed by the President, and attached to the Proceedings. th day. Summing up.

The Court is cleared for the purpose of considering the finding.

FINDING.

(7.) The Court find that the prisoner (No.—*Rank—Name—Regiment*) is not guilty of the charge; Finding. Not Guilty.

or,

is guilty of the charge [all the charges] Guilty.

or,

is guilty of the first charge, and guilty of the second charge with the exception of _____.

or,

is not guilty of desertion, but is guilty of absence without leave.

[*Instruction.*—In all cases when the Court acquit the Prisoner, the finding is to be recorded in simple terms "Not Guilty." If on the trial of a commissioned officer they desire to acquit the Prisoner honourably, they are to state so in a separate letter.

If the finding of not guilty is on all the charges, the finding must be pronounced in open court, and the prisoner released.]

PROCEEDINGS BEFORE SENTENCE.

(8.) The Court being re-opened, the Prisoner is again brought before it.

(*Rank—Name—Regiment*) is duly sworn.

Question by the President: What record have you to produce in proof of former convictions against the prisoner?

Answer. I produce a certified copy from _____ [*or* (There are none)].

This document being read, compared with the original, and found correct, is marked _____, signed by the President, and attached to the proceedings.

Q. How many times has the prisoner's name been entered in the _____ defaulter book for drunkenness?

A. On reference to the _____ defaulter book now laid before the Court it appears that the prisoner's name has been recorded therein for the crime of drunkenness _____ times since his enlistment.

Q. Is the prisoner under any sentence at the present time?

A. _____

Q. Did the prisoner surrender or was he apprehended?

In case of desertion. _____

A.

Q. What is the prisoner's general character?

A. _____

Q. What is his age?

A. _____

Q. What is the date of his attestation?

A. _____

Q. What service is he allowed to reckon towards discharge?

A. _____

[*Instruction.*—Deserter's service to be reckoned to date of desertion only.]

Q. Is the prisoner in possession of any decorations, good conduct badges, or honorary rewards?

A. _____

Q. How long has the prisoner been in confinement in respect of this trial?

A. _____

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The Court is again cleared.

SENTENCE.

[*Instruction.*—The provisions of Section 44 of the Army Discipline and Regulation Act* must be carefully attended to by the court in passing sentence.]

(9.) The court sentence the prisoner No. (*Rank—Name*)—Regiment. Sentence.

[*Instruction.*—The sentence is to be marginally noted in every case.]

In the case of an officer:—

(*a*) to suffer death by being shot [hanged]. Death.

(*b*) to suffer penal servitude for the term of_____years [*or* for life]. Penal servitude——years.

(*c*) to be imprisoned with [*or* without] hard labour for_____ days [and in consequence of_____the above imprisonment is not to be in the United Kingdom]. Imprisonment H. L. for——days.

(*d*) to be cashiered. Cashiered.

(*e*) to be dismissed from Her Majesty's service. Dismissed.

(*f*) to forfeiture of rank. Forfeiture of rank.

[*Instruction.*—The specific forfeiture to be stated.]

(*g*) to be reprimanded [*or* severely reprimanded]. Reprimand, or severe reprimand.

In the case of a soldier:—

(*h*) to suffer death by being shot [hanged]. Death.

(*j*) to suffer penal servitude for the term of_ ___years [*or* for life]. Penal servitude——years.

(*k*) to be imprisoned with [*or* without] hard labour for_____ days [and in consequence of_____ the above imprisonment is not to be in the United Kingdom]. Impt. H.L. for——days.

[*Instruction.*—If a man while undergoing imprisonment is sentenced to a term of imprisonment which will make the aggregate imprisonment exceed two years, the latter sentence will be invalid. Great care must therefore be taken in not imposing any term of imprisonment which will purport to make the prisoner subject to a continuous term of imprisonment exceeding in the whole two years. For example, if a man undergoing a year's imprisonment has, at the date of a new sentence being passed, been imprisoned for eleven months, the new sentence cannot exceed such a term as will make up a period of two years from the date of the original sentence, and a sentence for any term of imprisonment exceeding such difference will render the whole new sentence invalid.

2. If the term of imprisonment awarded exceeds 12 months and there are special reasons why the prisoner should not be sent to the United Kingdom to undergo his sentence, the Court must state the reasons and give the direction.]

(*l*) to be discharged with ignominy from Her Majesty's service. Discharge with ignominy.

(*m*) [if a volunteer] to be dismissed from Her Majesty's service. Dismissed.

(*n*) [if a non-commissioned officer] to be reduced to the rank of [*or* to the ranks]. Reduction.

* Chapter VI.

[*Instruction.*—Reduction to the ranks implies reduction of a non-commissioned officer to gunner, driver, sapper, or private, as the case may be.]

Fined £. s. d.

(*o*) to be fined pound shillings pence.

Stoppages.

to be put under stoppages of pay until he shall have made good the following articles, viz.:—

[or until he shall have made good the sum of_____, *as the case may be.*]

Forfeitures.

to forfeit absolutely (*or for any period not less than* 18 *months, as the case may be*)— Good Conduct badge (or badges) with pay which he has earned by past service.

N.B.—Number of badges to be specified.

or,

to forfeit the annuity [gratuity, medal, or decoration, *here specify each*] which has been granted to him.

or,

to forfeit all or any advantage as to pension which he has earned by past service.

or,

to forfeit all right to good-conduct pay, and to pension on discharge, whether in respect of past or future service.

N.B.—An offender may be sentenced to all or any of these forfeitures.

Instruction.—The medals are to be described.

Signed at_____, this_____day of_____, 18.

(*Signature*)
Judge-Advocate.

(*Signature*)
President.

CONFIRMATION.

(10.) Confirmed,

or,

[I confirm the finding and sentence of the Court, but mitigate *or* remit *or* commute_____

Date. (*Signature of confirming authority.*)

[*Instruction.*—Space of at least half a page is to be left for the remarks of the confirming officer, who is to state the manner in which each case is to be disposed of.

2. If the sentence is death, or if the offence is an offence triable under section 41 of the Act and the sentence is penal servitude, the consent of the Governor of the Colony must be obtained.]

REVISION.

(11.) On_____, the _____day of_____, at_____o'clock, the Court re-assemble by order of_____, for the purpose of re-considering their _____.

Present, the same members as before.

The letter [order *or* memorandum] containing the instructions to the Court and the reasons of the confirming authority for requiring a revision of the finding (or sentence) is read, marked_____signed by the President, and attached to the proceedings.

The Court having attentively considered the observations of the confirming officer and the whole of the proceedings, Revised finding.

a. do now revoke their former finding, and are of opinion, &c.,

or,

b. do now revoke their former sentence, and now sentence the prisoner, &c., &c. Revised sentenee.

or,

c. do now revoke their former finding and sentence. The Court are now of opinion, &c., &c. Revised finding.

or,

d. do now respectfully adhere to their former sentence [finding and sentence]. Revised sentence.

Signed at_____, this_____day of_____18 .

(Judge Advocate.) (President.)

[*Instruction.*—No additional evidence for prosecution or defence can be received on the revision, and no portion of the original minutes can be altered.

2. When Courts Martial are re-assembled for the purpose of revising their finding, and when any alteration therein is made, it is absolutely necessary that the sentence in such revised finding shall be given afresh, and it is not sufficient for the court to state that they adhere to their former sentence in such cases.]

(12.) RECOMMENDATION TO MERCY.

(See section 53 (9) of the Act.)*

[*Instruction.*—When the court have passed judgment, and desire to remark on the conduct of the parties before them; or on the manner in which a particular witness has delivered his testimony, &c., they are to embody their views in a separate letter, to be signed by the President, and forwarded with the proceedings to the confirming authority, or to the Judge Advocate General, as the case may be.]

(13.) FORM OF SUMMONS TO A WITNESS.

To _____

Whereas a _____court-martial has been ordered to assemble at _____on the_____day of_____18 , for the trial of _____, of the _____regiment. I do hereby summon and require you A.____B.____to attend, as a witness, the sitting of the said court at_____on the _____day of _____, at _____o'clock in the forenoon [and to bring with you the documents herein-after mentioned, namely_____], and so to attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under my hand at_____on the_____day of_____18 .

(*Signature*)_____

Deputy *or* officiating Judge-Advocate

(*or* President).

* Chapter VI.

52 When a J.A. is present he administers the following oath to every member of a C.M.; if there is no J.A. then this same oath is administered by the President to the other members, and afterwards by any sworn member to the President.

Oaths of Members.

"You do swear, that you will well and truly try the prisoner before the court, according to the evidence, and that you will duly administer justice according to the Army Discipline and Regulation Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this C.M. unless thereunto required in due course of law. So help you GOD."

If a person required by the Act to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn, to make a solemn declaration, in the prescribed form, and for the purposes of the Act such solemn declaration shall be deemed to be an oath.

Oath of Deputy or Officiating Judge Advocate.

An oath shall be administered to the Deputy J. A., or person officiating as J. A., by the President, or by some member of the court authorised by the President, in the following form:—

"You, *A.B.*, do swear that you will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this C. M., unless thereupon required in due course of law; and that you will not, unless it be necessary for the due discharge of your official duties, disclose the sentence of the court until it shall be duly confirmed. So help you GOD."

Oath of Officer in Attendance.

An oath shall be administered to an officer attending for the purpose of instruction by the President, or by the Deputy J.A., or person officiating as J. A., or by some member of the court authorised by the President, in the following form:—

"You, *A.B.*, do swear, that you will not, on any account or at any time whatsoever, disclose the vote or opinion of any particular member of this C. M. and that you will not divulge the finding or sentence of this C. M. until it is duly confirmed. So help you God."

Oath of Shorthand Writer.

An oath shall be administered to a shorthand writer by the President or by the Deputy J.A., or person officiating as J.A., or by some member of the court authorised by the President, in the following form:—

"You, *A.B.*, do swear that you will take down, to the best of your power, the evidence to be given before this court, and will faithfully and truly transcribe the same So help you GOD."

Oath of Interpreter.

An oath shall be administered to an interpreter by the President or the Deputy J.A., or person officiating as J.A., or by some member of the court authorised by the President, in the following form:—

"You, *A.B.*, do swear that you will, to the best of your ability, faithfully and truly interpret and translate as you shall be required to do touching the matter now before the court. So help you GOD."

Declaration of Member of Court Martial in lieu of Oath.

Where a solemn declaration is allowed, under section 52 of the Act, to be made by a member of a C. M., a solemn declaration shall be made before the officer authorised to administer the oath, in the following form; that is to say:

"I, *A.B.*, do solemnly declare that I will well and truly try the prisoner before the court according to the evidence, and that I will duly administer justice according to the Army Discipline and Regulation Act, 1879, without partiality, favour or affection, and I do further solemnly declare that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this C. M., unless thereunto required in due course of law."

Declaration in lieu of Oath in other Cases.

Where, in any other case, a solemn declaration is allowed, under section 52 of the Act, to be made, a solemn declaration shall be made before the officer authorised to administer the oath.

The form of solemn declaration for the Deputy J. A., or person officiating as J. A., shall be as follows:—

"I, *A.B.*, do solemnly declare that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this C. M., unless thereunto required in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the court until it shall be duly confirmed."

Declaration of Officer in Attendance.

The form of solemn declaration for an officer attending for the purpose of instruction, shall be as follows:—

"I, *A.B.*, do solemnly declare that I will not, on any account or at any time whatsoever, disclose the vote or opinion of any member of this C. M., and that I will not divulge the finding or sentence of this C. M. until it is duly confirmed."

Declaration of Shorthand Writer.

The form of declaration for a shorthand writer shall be as follows:—

"I, *A.B.*, do solemnly declare that I will take down, to the best of my power the evidence to be given before this court, and will faithfully and truly transcribe the same."

Declaration of Interpreter.

The form of solemn declaration for an interpreter shall be as follows:—

"I, *A.B.*, do solemnly declare that I will, to the best of my ability, faithfully and truly interpret and translate as I shall be required to do, touching the matter now before the court."

Swearing of Witnesses.

All persons who give evidence before any C. M., other than those who are by law empowered to make a solemn declaration, are to be examined upon oath in the following words:—

"The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth. So help you GOD."

Declaration in lieu of Oath.

If a witness is authorised by the Act to make a solemn declaration, the declaration is to be made before the officer authorised to administer the oath, in the following form :—

I, A B., do solemnly declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

declara-
e follow-

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TABLE OF CONTENTS.

CHAPTER VI.

CHAPTER VII.

CHAPTER VIII.

APPENDIX.